

FUNDAMENTALS
OF SOVIET LAW

ACADEMY OF SCIENCES OF THE U.S.S.R.
INSTITUTE OF STATE AND LAW

FUNDAMENTALS OF SOVIET LAW

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ABBREVIATIONS

- C USSR—Constitution of the U.S.S.R.
- CC—Civil Code of the R.S.F.S.R.
- BPC—Basic Principles of Copyright
- LC—Labour Code of the R.S.F.S.R.
- LTLM—Basic Principles of Land Tenure and Land Management
- FCL—Fundamentals of Criminal Legislation
- LCRCS—Law on Criminal Responsibility for Crimes Against the State
- FCP—Fundamentals of Criminal Procedure
- FLJS—Fundamentals of Legislation on the Judicial System
- CCivP—Code of Civil Procedure of the R.S.F.S.R.
- CCP—Code of Criminal Procedure of the R.S.F.S.R.

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of the U.S.S.R.*

Chapter One

THE SOVIET STATE AND LAW AT THE CONTEMPORARY STAGE

1. THE HIGHEST TYPE OF STATE

The Soviet socialist state is a new type of state. It is a state of workers and peasants. The socialist system of economy and the socialist ownership of the instruments and means of production are its economic foundation. Its political foundation is the Soviets of Working People's Deputies, which are organs of genuine people's power and the most massive organisations of working people.

The Soviet socialist state is multinational, it is based on the friendship of free and equal nations. As a result of their fraternal mutual assistance the socialist national republics, formerly backward in the economic and cultural respect, now have a powerful modern industry, mechanised large-scale agriculture, an extensive network of schools, scientific, cultural and educational institutions, and a great body of high-skilled personnel.

The Soviet Union has become a people's state—an expression of the will and interests of all its working people. In it society is not opposed to the individual, nor the state to the citizen. All sections of the population—workers, peasants, and working intellectuals—take part in government. The Soviet state has entered a new stage—the full-scale construction of communism.

The Soviet socialist state acts in the economic, cultural, military, foreign policy, and other spheres of life. To the utmost it develops the productive forces, transforms socialist relations of production into communist relations, strengthens the economic and defence potential, and improves the people's cultural and material standards. It also exercises very important external functions. Let us make a brief examination of every aspect of these activities.

Economic and Organisational Function

From its inception the Soviet state became the organiser of society's political, economic, and ideological activity.

V. I. Lenin, the great founder of the Soviet state, emphasised that the main purpose of the socialist state is not coercion, and not chiefly coercion, but creative effort in the construction of communism. While suppressing the resistance of the capitalists and landlords overthrown by the October Revolution, the young Soviet state set out to solve the tasks of socialist construction and to create new economic relations.

In order to remould the economically backward country, the state had to exert a prodigious effort in organisation and the economy. Now that the Soviet Union has entered a new period of its development—the full-scale construction of communist society—the effort required is even greater. The main economic tasks of this period are to create the material and technical foundation of communism, build up the U.S.S.R.'s economic might, and provide an ever fuller satisfaction of the people's growing material and spiritual needs. To overtake and outstrip the leading capitalist countries in per capita output is an historic task awaiting practical solution.

All this calls for great performance on the part of the Soviet state, particularly for the further development of planning, a most important form of its economic and organisational activity. This is concretely expressed in the target figures for the development of the Soviet national economy from 1959 to 1965, which are a component of the 20-year plan of communist construction.

But the economic role of the Soviet state is not confined to planning: it also organises fulfilment of plans.

The creation of the material and technical foundation of communist society is complex and manifold. It requires complete electrification of the country, all-round mechanisation and automation of production, extensive use of atomic and other types of power, synthetic materials, the close integration of science and production and the rapid progress in science and technology, the high level of culture and technical knowledge among the working people and the marked superiority in the productivity of labour over the leading capitalist countries, and application of scientific accomplishments in every branch of the national economy.

This means that the economic and organisational activities of the Soviet state are considerably extended. There will be thousands of new industrial and agricultural enterprises, which have to be supplied with machinery, electric power, and raw materials. The people have to be provided with housing and food.

The Soviet state is also faced with great tasks in improving the working people's living standards in town and country. Due to objective historical conditions none of the earlier plans allocated such substantial funds to raise the welfare of the masses, improve nutrition, housing, and social and communal services, as the 1961-80 plan. As a consequence, the organisational role of the Soviet state is also enhanced in this sphere.

Cultural and Educational Function

The transition to communism requires not only appropriate economic conditions, but also a high level of consciousness of all citizens. This increases the significance and role of the cultural and educational function of the Soviet state. It is prominent above all in directing public education: in the U.S.S.R. over 52 million people are enrolled in all types of schools.

Both the supreme and local organs of state power deal with schools. In December 1958, after a nation-wide discussion, the U.S.S.R. Supreme Soviet adopted the "Law on Establishing Closer Links Between School and Life, and the Further Development of Public Education". Soviet schools now offer general knowledge, and also specialised knowledge and working skills, which help graduates engage in socially useful labour.

Boarding-schools are an important factor in training versatile builders of communist society. Under a decision of the Soviet Government enrolment in these schools is to go up 14-fold by 1965. To fulfil this task, the state, through the State Planning Committee of the U.S.S.R. and the Councils of Ministers of the Union Republics, must build such schools, and also help collective farms build their own.

The Soviet state directs both secondary and higher education. A result of its efforts is the almost 7.5 million specialists with a higher and special secondary education now working in the national economy: 39 times more than before the Revolution. How much greater its effort is to be will be seen from the fact that from 1959 to 1965 Soviet colleges are to graduate 2.3 million specialists, against the 1.7 million in the seven years before this. There will be an especially rapid increase of their number in material production.

But the cultural and educational activity of the Soviet state is by no means limited to the guidance of public edu-

cation: the state also develops science and the arts. The State Research Co-ordination Committee, the Ministry of Culture (and its local offices), the State Committee on Radio and Television of the Council of Ministers of the U.S.S.R., and other agencies of the Soviet state direct research institutions, film studios, radio stations, stage companies and touring troupes, publishing houses, etc.

The following figures illustrate the state's effort in culture and education. Before the Revolution newspapers in Russia were issued in 24 languages. In the Soviet Union they are published in 67 languages, including 20 languages of peoples which in the past did not know the art of writing. In 40 years of Soviet power, the number of newspapers appearing in Russian increased 6.6 times, and in the languages of other nationalities of the U.S.S.R., 42.7 times. There is now a total of 7,686 newspapers, which include all-Union, Republican, territorial, regional, area, town, and district newspapers, and also publications catering for plants, offices, and institutions of learning. In 1958, there were an additional 2,777 local papers on the collective farms. Almost every branch of the national economy, culture and science has its own specialised magazine: in 1958, there were 799 titles with a printing of 29.1 million copies. Today, nine times more books are published in the U.S.S.R. per head than before the revolution. In the 400 years since the first book was printed, only 550,000 titles were published. For 40 years of Soviet power the figure is 1,386,000. In 1913, a total of 99 million books came off the press. In 1959, the figure had soared to over 1,200 million. The Soviet Union now has 400,000 libraries with a book fund of 1,500 million.

Education in the ethical ideals of communism involves the rooting out of antiquated ideas. And so the ideological activity of the Soviet state is aimed at developing the lofty ethical code of the new society and the all-round education of the working people in communism.

Other Internal Functions

Defence of the rights and interests of Soviet citizens, protection of socialist property, maintenance of law and order, control over the measure of labour and the rate of consumption are among the functions of the state being developed in the contemporary period.

While offering greater material incentives in the fulfilment of economic plans, the Soviet state strictly abides by the socialist principle of distribution according to work. It regulates both the share of the social product that goes into consumption, and its distribution in socialist society in accordance with the quantity and quality of the work of each. It regulates wages through a variety of systems of payment (piece-work, piece-and-bonus work, contractual work, time-work, etc.) based on a precise and differentiated calculation of the quantity and quality of the work. Wages are regulated and adjusted by the State Labour and Wages Committee, which works in close contact with the trade unions. At the same time the Soviet state allocates more funds for social needs to improve the life of society as a whole, and of every citizen individually. This includes public catering, holiday facilities and medical care for the working people, education for the young, and the development of cultural institutions and other undertakings.

External Functions

One of the most important external functions of the Soviet state is the struggle for world peace and peaceful coexistence of states with different social systems.

The struggle for peace springs from the very nature of socialist society, which has no classes or forces standing to gain from war; it is free from crises and unemployment, and needs peace to develop its productive forces for the fullest satisfaction of the material and spiritual needs of

its members. This struggle began with the birth of Soviet power: one of its first enactments was the Decree on Peace, which announced Soviet Russia's withdrawal from the war unleashed by the imperialists and called on the nations of the world to stop the bloodshed.

The struggle of the Soviet state for peace has been especially intensified in recent years. With exceptional patience the Soviet Government has been working to eliminate international tensions and the "cold war"; its efforts are aimed against atomic and hydrogen weapons tests, and for general and complete disarmament.

But since the imperialist Powers stubbornly refuse to accept the Soviet disarmament proposals and are feverishly building up their armed forces, the Soviet state has taken care to enhance the country's defence capacity. It strengthens the Soviet Army by equipping it with modern weapons and steadily improving the combat efficiency and political awareness of the troops.

The function of strengthening the friendship and fraternal co-operation of the countries of the socialist world is likewise vastly important. It aims at the further development of the entirely new type of international relations between the socialist countries, based on the principles of full equality, mutual respect for each other's national interests, and mutual assistance in a spirit of comradeship, which promote rational international division of labour for the swiftest development of each country's economy.

It is the historic mission of the socialist state to build a classless communist society, which will function without the state as such. But to complete the transformation of the socialist state into a communist self-administration by the public there must be certain internal and external conditions. First of all, the country's productive forces must be so developed as to allow full satisfaction of the reasonable needs of all members of society. Hence, construction of the material and technical foundation of communism must proceed to a level providing an abundance of goods,

so as to make it possible to substitute distribution according to work by distribution according to need. But to make state control over the measure of work and the rate of consumption superfluous, everyone must develop the urge to perform according to his abilities for the benefit of society.

Furthermore, the conscious and voluntary observance of the rules of socialist community—already second nature to most Soviet people—must become a habit with all members of society, making compulsion by the state superfluous.

These changes in the material and spiritual conditions of social life will be accompanied by the total disappearance of class divisions, and substantial distinctions between town and country and between mental and physical labour.

Internal conditions for the final transformation of the socialist state into a communist self-administration by the public will emerge only when these interconnected processes, characteristic of the full-scale construction of communism, are developed to a level under which the principle of communism—"from each according to his abilities, to each according to his needs"—is realised, and all citizens, without exception, take turns in administering public affairs, and observe the rules of the communist way of life as a matter of habit.

By promoting the material and spiritual requisites of communism, by training citizens in the observance of the rules of the socialist way of life and in the art of taking stock of and controlling production and distribution the Soviet state prepares the conditions for its metamorphosis—from a political organisation into a body politic engaged in planning and organising the economy, culture, and education.

In reply to a question put by the American journalist Henry Shapiro on the withering away of the state, N. S. Khrushchov said in November 1957: "This process is,

in fact, already under way. As the Soviet state develops, administrative functions change, and the same is true of some of the organs of compulsion.”¹

The socialist state is strong in the consciousness of the masses. That is why the principal law underlying the development of the socialist state is a steady broadening of democracy. The distinction between state administration and communist self-administration by the public tends to disappear as greater numbers of citizens take increasingly active part in government.

2. FURTHER DEVELOPMENT OF SOCIALIST DEMOCRACY

The equality of the citizens of the U.S.S.R. in relation to the means of production, which constitute socialist property, their liberation from exploitation, and the unparalleled growth of culture make real the juridical and practical equality of men in Soviet society.

Socialist democracy removes all barriers fencing off the working people from government and makes continued and decisive their part in shaping the state system and its organs, and in administering its affairs.

Today, the main trend in the evolution of the socialist state system is utmost development of democracy, the active participation of all citizens in government and the administration of economic and cultural affairs, greater efficiency of the state apparatus and more effective control by the public.

The Soviets of Working People's Deputies, the most numerous organisations, become increasingly important as agencies of the people's power and self-administration, combining the features of state and social organisation. To improve the work of the Soviets, strengthen their ties with the masses, develop Soviet democracy and draw the people into the activities of the Soviets on a far

¹ *Khrushchov Speaks*, Moscow 1958, p. 262.

wider scale, the Supreme Soviets of the Union Republics made a substantial increase in the number of deputies to the local Soviets in the March 1959 elections. After the elections of March 1961, there are almost two million deputies in the Soviets. With the several million working people who are members of their standing commissions, and the tens of millions of various commissions, inspections committees, and similar bodies, the Soviets are increasingly becoming social organisations, which make mass participation in government decisive.

There is continued development of Lenin's principle of democratic centralism in the management of the national economy. It is a combination of centralised planned management and the broad rights of local and lower organs in dealing with economic matters. Very important measures have already been carried out: the Union Republics now have more say in economic and cultural construction; management in industry has been remodelled; the collective farm system has been taken a stage forward and the machine and tractor stations have been reorganised; the system of national economic planning has been improved by the correct blending of centralised management and broad initiative at the Republican and local levels, etc.

There is increasing emphasis on democratic principles: persons in office are elected, they are accountable to their constituents, and are subject to control and removal. Staffs are being steadily reduced, and this allows the people at large to be trained in administration, the idea being eventually to eliminate the profession of state official.

Every day produces new forms of mass participation in the management of social production. Conferences of workers at factories and undertakings to discuss production matters are becoming increasingly important. All-Union conferences of workers in various branches of the economy and culture; the working people's participation in drawing up national economic plans; economic and tech-

nical conferences; collective agreements, etc.—all these are highly effective forms of using mass experience in production management. Many aspects of economic construction and major draft laws are discussed by the people across the country.

As Soviet society moves onward to communism, the trade unions, whose activity in production management is increasingly interknit with that of state economic bodies, become more and more important. The Young Communist League, with a membership of over 18 million, is a vibrant force in communist construction. Through consumers' co-operatives, which extend economic ties between town and country, 35 million shareholders are drawn into the administration of economic and cultural construction.

Elective trade-union committees at the factories and establishments are empowered to pass decisions on labour disputes. These are obligatory for management, and if the latter refuses to comply, are executed by an officer of the court. The functions of state supervision over the observance of labour laws and control over labour protection have been transferred to the trade unions. Trade-union inspectors have the right to fine management for violating labour laws.

The more vital interests of the working people are dealt with jointly by state organs and mass organisations. Thus, trade unions take part in solving labour and wages problems: major decisions are adopted jointly by the State Labour and Wages Committee and the Presidium of the All-Union Central Council of Trade Unions.

A most important decision is that many functions of state organs are to be gradually transferred to mass organisations, and that is already being done. For example, volunteer detachments maintain law and order side by side with the courts, comrades' courts, the Procurator's Office and the militia. Trade unions and standing commissions of the Soviets supervise the observance of law side by side

with the Procurator's Office and the Commission of Soviet Control, a special state body which sees to it that state institutions, departments and enterprises operate within the law. Physical culture and sports, sanatoriums and health resorts and certain other cultural services are already under the direction of mass organisations. In the next few years, state-administered cinemas, clubs, libraries and other cultural and educational establishments are also to be transferred to mass organisations.

The transfer of certain functions of state organs to mass organisations, and their joint exercise of these do not mean that the socialist state is doing less in communist construction; on the contrary, this is another step in the development of socialist democracy: state organs and people's organisations are drawing closer and closer together, and the mass of working people are taking an ever greater part in the exercise of state functions.

As a result, the Soviet state will be able to concentrate on developing the economy, the material foundation of the Soviet system; managing the national economy according to plan; rationalising the growing economic ties between its branches and economic areas; and accelerating technical progress.

Hence, the further extension of socialist democracy and the rights of mass organisations; the growing exercise by the latter of state functions; the consistent application of the principle of socialist legality by state organs; and the attraction of ever broader segments of the people into government. All this means that the social foundation of the socialist state is enlarged. The state itself is fortified, for it is strong in the consciousness of the masses.

But the role of the organs of compulsion must not be underestimated because of this. They are still needed to protect the rights and interests of citizens and socialist property against thieves and pilferers; to combat anti-social, parasitic elements, speculators, ruffians and other

criminals, and to defend the country against the designs of the imperialist forces and their agents.

But it is obvious that the activity of the organs of compulsion is undergoing a gradual change. Organisation and persuasion of the masses are becoming more and more important. The sphere of compulsion, which had never been the principal method of the socialist state, is now becoming still narrower. This is illustrated by the courts and the organs of the Procurator's Office. The number of crimes in the U.S.S.R. is known to have fallen considerably.

Today, there are no cases of prosecution in the Soviet Union for political crimes. That is unquestionably a great accomplishment and a striking testimonial of the Soviet people's unity.

The Communist Party of the Soviet Union has now set before the courts, the Procurator's Office and the militia, and also the Soviet public and every citizen, the task of eradicating crime. The 1959 Decision of the C.P.S.U. Central Committee and the Council of Ministers of the U.S.S.R., "On the Participation of the Working People in the Maintenance of Law and Order", points out that with the growth of the people's awareness and political activity and the progress of Soviet democracy, the struggle against immoral, anti-social acts must be carried on not only by the administrative organs, but mainly by the broad enlistment of working people and mass organisations for the maintenance of law and order. It is the task of volunteer detachments of factory and office workers to curb violations of law and order, primarily by persuasion and prevention.

While on the subject of change in the nature of state compulsion, we must note that in recent years legislative enactments abolished criminal responsibility for certain acts, and established administrative or financial liability.

As conditions for transition to communist society are created, as the consciousness of the masses grows, the sphere of compulsion will continue to shrink, while educa-

tion of citizens in the ethical ideals of communism and organisation of the masses will gain in importance.

It is the purpose of the Soviet state eventually to substitute all punishment by educational measures. And so, with the advance to communism, public opinion will gain in weight, and there will be more and more emphasis on this form of influence through Party, trade-union and other mass organisations.

3. DEVELOPMENT OF SOVIET LAW AND SOCIALIST LEGALITY

Having come to power the Soviet working class and peasantry created a socialist state. They also wrote their own socialist law. In essence, it is the will of the working class and all the working people, which is determined by the material conditions of Soviet society, and which has become law.

In the final analysis, Soviet law is determined by socialist economy, and fixes the people's triumphs in the economy and culture and the progress of the socialist state. At the same time, it has a telling effect on the economy.

Soviet law is a system of rules established by the state to promote the consolidation of the social order which helps society advance towards communism.

Socialist law and legality consolidate and safeguard the social and state system and its economic foundation—the socialist system of economy and socialist property—the rights and freedoms of Soviet citizens, and ensure the development and strengthening of socialist relations in society.

The Soviet socialist state creates all conditions for man's free and harmonious development. Soviet citizens are guaranteed inviolability of the person and the home. They are also ensured genuine equality, regardless of nationality or race, in every sphere of economic, cultural, social, and political activities, and also freedom of conscience, freedom

of speech, freedom of the press, freedom of assembly, public processions and demonstrations, and freedom of association.

For the first time in history, the socialist state proclaimed the citizens' right to work and leisure, material security in old age, illness or incapacitation for work, and the right to education. It does not merely offer these rights and freedoms. It secures their actual realisation.

Under socialism the right to work is not only the right to guaranteed employment, but also the right to receive work, in which full use is made of one's capabilities and which accords with one's inclinations, interests and knowledge. The right to leisure is the right to make use of the time allotted for rest in accordance with one's personal interests both for recreation and spiritual and physical improvement. The right to material security in old age, illness or incapacitation for work is not merely the right to material security in the narrow sense of the word, but also the right to free medical aid, appropriate care, and living conditions as required by age or illness, and opportunity for social activity and cultural services. The right to education is the right to receive knowledge closely bound up with life and production—with the practice of communist construction. It is not limited to the right to secondary, higher, and special education. It is the Soviet citizen's right to receive continued social assistance in the improvement of his skills as long as he lives.

For the first time the citizen is given a realistic choice of career, for society and the state offer everyone the possibility of developing his abilities and fully participating in economic and social activities. General education, closely bound up with production, which citizens receive from childhood, enables them to find out what they want to do and make a free choice of the vocation most in accord with their inclinations and interests. Under socialism man need never cease acquiring knowledge, improving skills or extending the sphere of his activity. He can go all the way

to the top in his line or change his occupation, when impelled to do so by experience or mental stature.

Humiliation and inequality of women were eliminated for good by the October Revolution. The equality of men and women is not only recorded in the law—it is ensured by the socialist way of life. Women are active in social labour and in social and political life, because they have the same right as men to work and pay, leisure, education, and social security, and also because the state gives them extra maternity leave, renders assistance to mothers with many children and single mothers, and provides an extensive network of maternity homes, nurseries and kindergartens. All this is a proper foundation for marriage, whose bonds are love and affection, and not hope of gain, as is often the case in capitalist society.

* * *

In the full-scale construction of communist society the Soviet state does not relax its legislative activity. On the contrary, it becomes more vigorous, for it is a vital form of socialist democracy and is connected with the ever growing importance of the representative legislative organs, the Supreme Soviet of the U.S.S.R. and the Supreme Soviets of the Republics.

Soviet legislation is a juridical expression of the people's will and is designed to promote the fulfilment of the grand programme of communist construction.

Socialist legality is intrinsic in Soviet power. The enemies of socialism try to picture the Soviet state as an authority denying legality, but the history of the U.S.S.R. and the other socialist states proves that a working people's state cannot be formed without the establishment and consolidation of the fundamentally new socialist law and order or without the practice of revolutionary socialist legality.

Lenin regarded socialist legality and the strict observ-

ance of Soviet laws as vastly important. On his initiative, the Sixth (Extraordinary) Congress of Soviets on November 8, 1918, in an atmosphere of sharp struggle against internal counter-revolutionaries and foreign interventionists, adopted a special decision, "On the Precise Observance of Laws". It called on all citizens, organs, and persons in office faithfully to abide by the laws and decrees of the Soviet authorities and emphasised that strict and undeviating observance of these laws was a requisite for the further development and strengthening of the power of the workers and peasants in Russia.

This has always been a most important principle underlying the activities of the Soviet state, an earnest of success in communist construction and a guarantee of realisation of the constitutional rights of citizens.

Socialist legality is inherent in the social and political system of the U.S.S.R. It stands on guard of the citizens' political rights and freedoms, it protects their labour, housing and other personal and corporeal rights and interests, and their life, health, dignity, and reputation. The undeviating fulfilment of the laws protecting the vital interests, inviolable rights and freedoms of citizens, is a salient feature of the socialist legal system as a whole. Under socialism the material and the juridical guarantees of civil rights and freedoms are blended: socialism's economic system creates the material conditions for the full enjoyment of civil rights and freedoms, while its legislation fixes these conditions juridically. It ensures the protection of the rights, freedoms, and interests of citizens, and builds up a ramified system of legal guarantees and means of ensuring these rights. In the socialist state the satisfaction of the legitimate interests of the individual is in accord with the requirements of society, which is free from the exploitation of man by man. That is why utmost precision in the execution of the rules of law, their accurate application, and also protection of the subjective rights of citizens are an important task of the Soviet state.

Socialist legality is the guiding principle underlying the activities of all organs of state power and administration, persons in office, and other citizens.

The Soviet Procurator's Office is an important factor in the struggle for the observance of socialist legality. Its main task is supreme supervision over the precise execution of the laws by all institutions, persons in office, and other citizens.

Socialist legality becomes even more important with the mounting successes in communist construction. It is the task of Soviet legislation to develop the juridical guarantees of the people's growing welfare. But without scrupulous observance of Soviet law there can be no advance in economic and cultural construction.

Socialist legality consolidates the alliance of the workers and peasants and the friendship of the peoples of the multinational Soviet state. It is an important instrument for implementing the principles of socialist democracy.

The grand task of building the material and technical foundation of communism requires further improvement of the legal forms of economic administration and development of the rules of Soviet business law. Legislation governing the manifold and complex relationships between socialist economic enterprises and organisations must rationalise management of the national economy and improve the legal regulation of economic activity of the collective farms and other co-operative bodies.

Socialist legality actively promotes the advance of Soviet society towards communism. It becomes more and more important as the idea of legality is imbedded in the minds of the overwhelming majority of citizens and they become intolerant of every violation of the law.

The strict observance of socialist legality fortifies the faith of Soviet citizens in the strength of their state, which safeguards their rights and freedoms.

* * *

The deep-going social and economic changes that have taken place in the Soviet state, and its entry into the new historic period of the full-scale construction of communism, require the further development of Soviet law and socialist legality.

Codification of Soviet laws is an important and pressing problem which Soviet legislative organs are solving, and must solve in the next few years. The need is especially great in view of the measures taken in recent years to reform management of industry, boost agriculture, extend the rights of the Union Republics, and further strengthen socialist legality, etc. Besides, in several branches, Soviet legislation now in force consists of various enactments dating to the first years of Soviet power. It was amended and supplemented to keep it abreast of realities, but many laws, formally in force, are out of date.

In line with the extension of the rights of the Union Republics the Supreme Soviet of the U.S.S.R. adopted a law on February 11, 1957, transferring additionally to the competence of the Union Republics legislation on the structure of their courts, and adoption of civil, criminal, and procedural codes. It retained within all-Union jurisdiction the establishment of the fundamentals of legislation. This allows for fuller play of the specific national features in each Union Republic, including their history, economy, and geography, for in the full-scale construction of communism the Union Republics are to play a bigger part. They are to bear greater responsibility for many aspects of economic and cultural construction previously within the province of all-Union organs, and so each Republic will be more active in pertinent legislation.

The extension of the legislative powers of the Union Republics does not clash with the principle of uniform legality but accords with it most fully. Basically, socialist legality has been and remains uniform, for it reflects and fuses the general interests of the state and the people as a whole with the specific interests of each Union Republic

and nation. It rests on the uniformity of the economic and political foundation of the Union and its Republics, and on their singleness of purpose in the struggle for communism.

The laws adopted at the Second Session of the Supreme Soviet of the U.S.S.R. in December 1958 are highly important for the codification of Soviet laws. These include the Fundamentals of Criminal Legislation of the U.S.S.R. and the Union Republics; the Law on the Abolition of Deprivation of Rights by the Courts; the Law on Criminal Responsibility for Crimes Against the State; the Law on Criminal Responsibility for Military Crimes; the Fundamentals of the Judicial System of the U.S.S.R., the Union and Autonomous Republics; the Statute on Military Tribunals; and the Fundamentals of Criminal Procedure of the U.S.S.R. and the Union Republics.

These laws are an important step forward in the development and improvement of socialist legality. They are a reliable safeguard of the Soviet state and its law and order, and also of the person and rights of citizens.

The new laws proceed from the need to apply the Leninist principles of socialist legality. The Soviet state has set itself the task of wiping out crime altogether, and so lays special stress on measures to prevent and remove its causes, and to enlist the Soviet public in the mass campaign against crime. The new laws reduce and mitigate criminal responsibility for offences which are not a great danger to the state and society. On the other hand, they prescribe stricter responsibility for the most dangerous crimes against the state and against the life and health of citizens.

The Fundamentals of Criminal Legislation proclaim, in particular, that punishment can be imposed only by the courts and only on persons who have committed definite crimes provided for in the Criminal Code. To reinforce socialist legality the Fundamentals exclude the possibility of punishment by analogy, that is, in cases not specifically prescribed by law.

The Fundamentals stress the need for more educational measures with respect to juvenile delinquents. They provide for greater guarantees of personal rights in criminal proceedings and broader rights for the injured person, the accused, and his defence counsel. The role of the public in judicial proceedings becomes ever greater: the laws provide for the participation in criminal cases of prosecutors and defenders nominated by the mass organisations.

The Fundamentals lay down that deprivation of liberty may be imposed for a period not exceeding 10 years, but for especially dangerous criminals and persistent offenders the maximum period is 15 years (instead of the former 25 years).

The Fundamentals of Criminal Legislation, the Judicial System and Criminal Procedure, adopted by the Supreme Soviet of the U.S.S.R., invest the Union Republics with broad legislative powers.

Work is now in progress on the draft fundamentals of legislation on labour, the family and marriage, land tenure, civil legislation and other matters listed in Article 14 of the Constitution of the U.S.S.R. These will later be submitted for adoption by the U.S.S.R. Supreme Soviet.

The Fundamentals of Criminal Legislation, the Judicial System and Criminal Procedure are a solid foundation for legislation in the Union Republics. On that basis the Union Republics have already adopted their criminal and criminal procedure codes, and also their codes of laws on the judicial system. Subsequently, as the Supreme Soviet of the U.S.S.R. enacts the Fundamentals, they will adopt the other codes as well, including the civil code, the civil procedure code, the labour code, the code of laws on the family and marriage, and the land (land and water) code. Suggestions have also been made to draft certain other codes, such as the corrective labour code and the administrative code.

Some academic lawyers in Western Europe and the United States try to denigrate Soviet realities by distorting the broad scientific discussions in the Soviet press of the drafts of legislative acts. Thus, in mid-1958, when the drafts of the All-Union Fundamentals of Criminal Legislation and Criminal Procedure were already published for wide debate, Professor John Hazard, of Columbia University, told the Fifth International Congress of the Comparative Law that Soviet codification was slow because it was artificially retarded by officials fearing that the new laws would bind them hand and foot.

Yet no sooner were the all-Union laws adopted than another American lawyer, Professor Leslie Lipson, of Yale University, in his comments on the new Fundamentals declared the very opposite: he said the new laws were imposed on Soviet citizens from the top.

There is no need to examine these absurd statements. The working out of long-term codes against the background of the rapidly developing socialist society is a task whose solution does not permit of undue haste.

4. SYSTEM OF SOVIET LAW

In sum, the numerous legal rules adopted by the Soviet state constitute the coherent system of Soviet socialist law.

It consists of a number of interconnected branches, whose rules regulate groups of analogous social relations. The branches of law are discriminated according to the subject of legal regulation, i.e., they differ in the range of social relations regulated.

Under socialism there is no division of the legal system into two spheres of legal regulation, namely, public and private law, as is the case in the capitalist countries.

because the basic means of production are not owned by private persons, but by society as a whole. The socialist system of economy is its planned operation by the state and co-operatives. The personal property of citizens is used to satisfy their needs as consumers.

The present work is patterned after this system of Soviet law: 1. Constitutional Law; 2. Administrative Law; 3. Business Law; 4. Civil Law; 5. Labour Law; 6. Land Law; 7. Collective-Farm Law; 8. Finance Law; 9. Family Law; 10. Criminal Law; 11. Criminal Procedure, and 12. Civil Procedure.

It deals with the aforementioned branches of law, with the exception of Soviet business law, which demands special consideration.

Under socialism the legal regulation of the national economy is a form of management of economic construction. Business law regulates relations in socialist economy, but does not extend to relations between citizens, or involving citizens.

The subject of legal regulation of business law is relations which take shape in the socialist economy. Since there is no division of law into public and private, business law regulates all relations in the socialist economy, including those based on authority and subordination, as well as relations based on the juridical equality of the parties. Because these relations are integrated and uniform, the rules of business law are also uniform.

Above all business law regulates the organisation and administrative structure of the socialist economy. It defines the administration of socialist property, the pattern of economic management, and the legal status of economic administrative organs and enterprises. It also prescribes their administrative and business practices.

The legal regulation of economic activities and the dynamics of economic relations are another group of questions within business law. These include national economic

planning, contracts, bank controls, credits, and settlement of accounts in the national economy. Business law also regulates the examination of disputes between socialist enterprises and organisations.

The Institute of State and Law of the Academy of Sciences of the U.S.S.R. is currently engaged in extensive research in business law. But the results are not yet to hand and this book is published without a special chapter on business law. However, the major aspects of legal regulation of the national economy are discussed in the chapters on civil and administrative law.

Chapter Two

CONSTITUTIONAL LAW

1. CONCEPT, SYSTEM AND BASIC PRINCIPLES

Constitutional law regulates, incorporates and develops the social relations which determine the basic features of the Soviet social and economic system and its political structure. It is an expression of the socialist democratism of the Soviet state system: the sovereignty of the people in every sphere, from state power to key national resources. It fixes, therefore, not only the political, but also the economic framework of society. On the strength of objective economic laws, it develops and improves the social and economic order for the benefit of the Soviet people.

State law is an expression of the sovereignty of the Soviet nations, and fixes the forms of solution of the nationalities question in the interest of all the peoples of the multinational state.

The organs of the Soviet state receive their powers directly or indirectly from the people; they are under the control of the people and are responsible to them.

This makes the Soviet people the decisive force in the creation of material and spiritual values, the demiurge of history and master of its future.

The Soviet state is a powerful instrument in the hands of the Soviet people for the construction of socialism and communism.

Soviet state law establishes the basic principles for all other branches of law: these draw on state law for their

fundamentals, which they elaborate and render concrete. Constitutional law thereby ensures the unity of the Soviet juridical system.

The rules of Soviet constitutional law deal with the following matters:

social structure (the class structure of Soviet society, its political and economic foundations, state planning of national economic activities, the principles of socialism);

state structure (the composition of the Union of Soviet Socialist Republics, the sovereignty of the U.S.S.R. and the Union Republics; the jurisdiction of the U.S.S.R., the Union and Autonomous Republics; citizenship and the administrative and territorial structure of the Soviet state);

structure and principles underlying the activity of state organs (the higher organs of state power in the U.S.S.R., the Union and Autonomous Republics; the organs of state administration of the U.S.S.R., the Union and Autonomous Republics; the local organs of state power and state administration; the courts and the Procurator's Office);

fundamental rights and duties of citizens (substance and material guarantees);

electoral system (the fundamentals of electoral law and the procedure of elections to the organs of state power).

These matters are fixed in that order in the 1936 Constitution of the U.S.S.R. That is the system of Soviet state law as a branch of law. As a science it reflects to a certain extent the system of the branch but is at the same time distinct from it. The science deals with the history of state law and generalises its rules, integrating them into the several institutions and digesting the mass of historical, political, and legal matter into the principles of Soviet state law.

The Soviet Constitution is the fountain-head of Soviet state law and also the juridical groundwork for current Soviet legislation.

The fundamentals of Soviet constitutional law are the broad general principles underlying the Soviet social and

state system, including those which, as a body, express the basic features of Soviet state law and impregnate all its institutions.

These principles are objective, because they are an extract of the laws underlying the development of the Soviet state and law. Therein lies their theoretical and practical significance. They are the result of scientific generalisation of Soviet state development as embodied in the constitutional and other major enactments of the Soviet state.

The rules of Soviet state law fix and develop actual social relations. As a consequence, there is no clash of legal tenet (*de jure*) and reality (*de facto*).

For the sake of convenience these principles may be reduced to two main groups:

- 1) political; and
- 2) socio-economic.

Actually, there is in Soviet society a singleness of economic and political guidance.

I. Political Principles

a) The key principle is the guidance of society and the state by the working class (the dictatorship of the proletariat). This class is unmatched in organisation and is consistently revolutionary, and it is capable of bringing the construction of communist society to its consummation.

The Soviet state proclaimed itself as a state of the dictatorship of the proletariat, resting on the alliance of the working class and the toiling peasantry, the supreme principle of the dictatorship. From the very first, Soviet power ensured the political domination of the vast majority of the members of society—the working people—over its insignificant minority—the overthrown exploiting classes, the landlords and the capitalists.

Because the overthrown exploiting classes resisted the socialist changes, the Soviet state had to use measures of

suppression with respect to these classes, and in some cases to resort to force. But force is not the characteristic of the Soviet state. Its salient feature is the creation of a new, equitable society. Force would not have been used at all, if the enemies of the new system had not compelled the working class to deal counterblows. The dictatorship of the working class resorted to force only when it was imperative, but force was used against the oppressors for the humanistic purpose of liberating the working people. An example was the Civil War of the workers and peasants against the landlords and the capitalists, who were supported by foreign military intervention. In spite of their economic and military superiority, the landlords, capitalists and their whiteguard hordes were defeated in the Civil War—simply because the exploiters were not supported by the broad masses. The just cause of liberating the working people from capitalist oppression triumphed. There was established the domination of the workers and peasants—the bulk of society—over the overthrown exploiting classes. This is feasible only when the overwhelming majority of citizens take part in administering state and social affairs, for that is genuine democracy. Soviet democracy is of the highest type: for the first time in history it gave power to the majority.

In the period of transition from capitalism to socialism the exploiters were provisionally restricted in their political rights, while the workers were given temporary privileges in elections to the congresses of the Soviets as compared with the other segments of the working people. This was required by the specific conditions of development of the Russian revolution and the acute forms of resistance (the Civil War) by the exploiting classes which were unseated by the October Socialist Revolution. There is, therefore, no ground to regard deprivation of the exploiters of political rights as an inseparable element of the dictatorship of the proletariat.

The diagram illustrates the organizational structure of the Soviet Union, starting from the Supreme Soviet of the U.S.S.R. at the top. This body oversees the Supreme Soviets of the Union Republics. These republic-level Soviets are further divided into two main branches: one for cities of republican subordination and another for district Soviets in cities. The central part of the diagram shows the hierarchy of Regional Soviets, which are subdivided into Territorial Soviets and District Soviets. These regional Soviets are further divided into cities of regional subordination and district Soviets in cities. The bottom part of the diagram shows the hierarchy of District Soviets, which are subdivided into cities of district subordination and village Soviets. The entire structure is organized into a clear, hierarchical flowchart.

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graph TD
    A["SUPREME SOVIET OF THE U.S.S.R."] --> B["SUPREME SOVIETS OF UNION REPUBLICS"]
    B -.-> C["Soviets of cities of republican subordination"]
    B -.-> D["Soviets of cities of district subordination"]
    B --> E["REGIONAL SOVIETS"]
    E --> F["Territorial Soviets"]
    E --> G["DISTRICT SOVIETS"]
    F --> H["District Soviets in cities"]
    F --> I["Soviets of cities of territorial subordination"]
    G --> J["Soviets of cities of regional subordination"]
    G --> K["District Soviets in cities"]
    G --> L["Soviets of cities of area subordination"]
    L --> M["Settlement Soviets"]
    L --> N["VILLAGE SOVIETS"]
    
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With the victory of socialism, which eliminated the exploiting classes in town and country, there was no longer any need for restrictions against anyone because of social position and past activity. Nor did the working class have any further use for its privileges, for the moral and political unity of Soviet society was consolidated. The social foundation of the workers' and peasants' state was broadened, and conditions appeared for the further democratisation of the Soviet system. This was done on the basis of the 1936 Constitution of the U.S.S.R.

The Soviet state has entered a new stage. The function of suppressing the resistance of the exploiting classes has disappeared with these classes. The principal functions of the socialist state—organisation in the economy, and in culture and education—have been developed in every way. With the full and final victory of socialism—the first phase of communism—and society's transition to full-scale communist construction, the dictatorship of the proletariat has fulfilled its historical mission and from the standpoint of internal development has ceased to be a necessity in the U.S.S.R. The state which emerged as a dictatorship of the proletariat has become a state of the entire people, and an organ expressing the interests and the will of the people as a whole.

b) Another major principle of Soviet state law is electiveness and sovereignty of the representative organs, the Soviets of Working People's Deputies.

All Soviets, from top to bottom, are elected by citizens on the basis of universal, direct and equal suffrage by secret ballot. It is the duty of every deputy to report to his electors on his work and the activity of his Soviet, and he may be recalled at any time upon decision of a majority of the electors. The fact that the Soviets are elective and that their deputies can be replaced when the people so desire, that they are responsible to the people and have to report to them, is a salient feature of Soviet democracy.

The best men and women are elected to the Soviets because in the elections there is absolute freedom in the nomination of candidates and discussion of their personal abilities and professional qualities at meetings and in the press.

Fresh forces are brought into the Soviets at each election when at least one-third of the total number of deputies is elected anew. This brings in a wider range of persons into the leading bodies, and rules out abuses of authority by individual officials. The system of regular accountability of deputies to their constituents increases the responsibility of those elected by the people. The constituents may recall any deputy at any time (for details see below).

The sovereignty of the Soviets is an essential feature of the Soviet system. All power belongs to the working people of town and country as represented by the Soviets of Working People's Deputies. The entire administrative apparatus is as a rule formed by the Soviets of Working People's Deputies; it functions under the guidance of the Soviets, reports to the Soviets, and is responsible to them.

The Soviets are, therefore, the political foundation of the U.S.S.R., and the Republic of Soviets is a form of socialist state.

The plenary powers of the Soviets are a most striking expression of the sovereignty of the Soviet people and the Soviet state. The people wield Soviet power as an instrument of their will and sovereignty. Under socialism the sovereignty of the people and the sovereignty of the state are one.

c) Broad and direct participation of the masses in government is a basic principle of the Soviet system.

The people exercise their state power through the Soviets of Working People's Deputies. But they also implement their power directly, namely, by electing the organs of power, giving instructions to the Soviets and their deputies, hearing reports from deputies, and controlling the

activity of Soviets and deputies, participating in referendums, nation-wide discussions of draft laws, branch conferences on important aspects of state administration on the all-Union, Republican and local scale, the numerous auxiliary and consultative organs of the Soviets, Executive Committees and their agencies, and the various mass organisations assisting the state organs in their work, such as the trade unions, collective farms, co-operatives, the Young Communist League, societies, etc.

Through this ramified system of public action the Soviet authority consults with the people concerning the major aspects of government, the "centre" takes counsel with the "localities" and executives with the rank and file.

Through these organisations the creativity of the masses is extended; through them the public controls the state apparatus, helps state agencies, and offers a wealth of experience in dealing with affairs of state.

The broad masses take an active part in government because the Soviet system combines the advantages of parliamentarism with those of direct democracy. Thus, the draft laws on the reform of management of industry (1957) and the further strengthening of the collective-farm system and reorganisation of machine and tractor stations (1958) were adopted after nation-wide discussion; over 40 million took part in discussing the theses of the C.P.S.U. Central Committee and the Soviet Government on the first question, and over 49 million on the second.

d) The cardinal feature of the dictatorship of the socialist state is the leading role of the Communist Party in society and the state.

This fact is established in the Constitution of the U.S.S.R., and is one of the basic principles of Soviet state law.

The Communist Party is the only party in the country, and it is the ruling party. But this does not mean, however, that it substitutes for state organs. It performs its

leading role within the framework of the Soviet Constitution. The Party is the working people's vanguard because of the great trust it commands among the masses, whose interests it expresses and defends with consistency.

There is only one party in the U.S.S.R. because there are no antagonistic classes, and Soviet society is united morally and politically.

The Party guides state organs primarily by putting up for state office its best men and women, who are dedicated to the people, while the people elect Communists alongside with non-Party people as deputies to the Soviets. In the 1959 elections, for instance, 1,801,663 deputies were elected to all local Soviets; 55 per cent of them were non-Party people, and 45 per cent, members and candidate-members of the C.P.S.U.

The Party's guidance of the Soviet state is ensured by its members in Soviet state agencies, and the Party's authority over its members, irrespective of their office.

This guidance is truly democratic, for the Party is itself organised on genuinely democratic lines and unites forward-looking men and women from the working class and the other segments of the working people. The Party's watchword is concern for the people's welfare, and this has earned it the confidence and support of Soviet society as a whole. The Party expresses the people's vital interests because of its intimate, indissoluble ties with the masses.

e) The Soviet state being multinational, the sovereignty of the nations and their equality within the framework of the Soviet federation are the important principles underlying its structure and activity.

Soviet power is so patterned as to express in Soviet laws and the activity of its organs not only the working people's common interests, without regard for nationality, but also the specific interests of the nations. For that pur-

pose each Soviet nation has its own Union or Autonomous Republic, Autonomous Region or National Area. The diversity of state structure of the Soviet nations and nationalities ensures their unhampered development, raises broad masses to public life and active participation in government, and helps to develop their productive forces and culture, which is national in form and socialist in content.

In recent years, in line with their purpose of strengthening the friendship of the peoples and enhancing the role of the national Republics in communist construction, the Communist Party and the Soviet Government took steps to extend the rights of the Union Republics, which are sovereign states within the U.S.S.R.

Territorial (regional) structure is now within the sole jurisdiction of the Union Republics. Legislation on the judicial system and procedure, the promulgation of the civil, criminal, civil procedure and criminal procedure codes are now also within their jurisdiction. The economic rights of the Union Republics have been considerably extended, especially by the reorganisation of management of industry, which gave another impetus to the creative activity of their organs.

The planning rights of the Republics have also been extended, allowing for broader consideration of local conditions: this creates even greater opportunities for stimulating local initiative, strengthens the national Republics and consolidates their friendship and fraternal co-operation within the multinational state.

f) The principle of socialist legality, another fundamental of Soviet state law, has two main aspects.

First, Soviet laws express the people's will and embody fair and progressive principles of social life and state activity. This is a postulate of genuine legality.¹

¹ For details see Chapter Three, Section 3.

Second, socialist legality is precise and undeviating observance by all state agencies, persons in office, and citizens of the law and the directives of the state authority based on the law. The law must be strictly observed, because it is an expression of the will of the entire people. Faithful observance of the law is a guarantee that the people's will and sovereignty are realised.

The Soviet Constitution establishes that the principle of socialist legality is the basis of activity of all state agencies, from top to bottom.

g) Guaranteed democratism is another fundamental of Soviet constitutional law.

Soviet power does not confine itself to a formal proclamation of democratic principles: it brings to the fore the matter of the material and other guarantees of democratic rights and freedoms in practice. This makes Soviet democratism guaranteed socialist democratism. Its main political and material guarantees are:

1) consistent realisation of the working people's plenary powers in town and country to ensure the material and cultural needs of all members of society;

2) the socialist system of economy and the socialist forms of ownership of the instruments and means of production, enabling the state authority to gear developing production to the satisfaction of society's growing needs.

These guarantees make real the Soviet citizen's every right and freedom. How realistic his rights are is evident from the fact, for instance, that the working people are not faced with unemployment. Every Soviet citizen is guaranteed a job and a fair wage. Soviet society is free from exploitation and oppression. Everyone works for himself and for society, and society serves the interest of each.

h) Democratic centralism is the key organisational principle of Soviet state law.

As has been said, the Soviet system is a genuine democracy. All organs of the Soviet state—managed corporately

or individually—function on the principle of collective leadership and draw on the mass for experience in their work. The agencies managed corporately discuss their decisions collectively, and adopt them by a majority vote, which is binding on the minority. The agencies managed individually make wide use of collective discussions of major problems, but the final decision is taken and put through by an executive, who is fully responsible for it.

Centralism means that the part is subordinate to the whole, the lower agencies to the higher. This type of subordination springs from the nature of the economy owned by the whole people, which is inseparable from centralised planning and management. It is also dictated by the nature of Soviet power, which is international in substance and unites working people of different nations in a single centralised state. In the Soviet socialist state centralism is fused with broad democratism.

i) Peaceful coexistence of the Soviet state with other countries has pride of place among the social and political principles of Soviet constitutional law.

From the first, the Soviet state has been a steadfast champion of peace and peaceful coexistence. Expressing the determination of the workers and peasants, the Second All-Russian Congress of Soviets proclaimed in its first decree in November 1917 undeviating pursuit of the policy of peace and international friendship. This decree became the foundation of the Soviet state's foreign relations. Since then Soviet power has been pursuing its policy of international peace with vigour and consistency, and regards as its sacred duty prevention of another war. This duty is inscribed in the Soviet Constitution, in accordance with which the Soviet state "proclaims a state of war in the event of military attack on the U.S.S.R., or when necessary to fulfil international treaty obligations concerning mutual defence against aggression" (C USSR 49 m).

Guided by the people's will and the principles of the peace-loving policy, the Supreme Soviet of the U.S.S.R. adopted on March 12, 1950, the "Law on the Defence of Peace", which regards the propaganda of war as a heinous crime against humanity.

The Soviet state stands for the putting into practice of the principles of peaceful coexistence between states with different socio-economic and political systems, namely, mutual respect for territorial integrity and sovereignty, non-aggression, non-interference in each other's domestic affairs, equality, and mutually advantageous economic co-operation.

There is much history to show that interference in the domestic affairs of other states inevitably leads to conflicts and military clashes. The Soviet state favours the settlement of differences and contradictions with the capitalist countries in peaceful competition, above all economic competition. "We understand this," says Khrushchov, "as competition in the sphere of peaceful production, a contest between the two systems—socialism and capitalism—in making life better for the people, in raising living standards."¹

In its relations with states of the socialist type the Soviet Union is also guided by the principle of proletarian internationalism, which is fraternal co-operation and all-round mutual assistance.

II. Socio-Economic Principles

a) Soviet constitutional law makes use of the imperatives of objective economic laws, including the fundamental economic law of socialism. This is a governing socio-economic principle. It implies unceasing expansion and modernisation of production on the basis of progressive

¹ N. S. Khrushchov, *For Victory in the Peaceful Competition with Capitalism*, Moscow 1959, p. 108.

technology for the fullest satisfaction of the constantly growing requirements and harmonious development of all members of society.

The concern of Soviet power for the people's welfare is objective, for that is its supreme law.

Soviet power makes use of the objective economic law of planned, proportional development of the national economy to enact state economic plans and thereby to organise and direct the creative efforts of the mass.

National economic planning is carried out by state agencies, which operate with the broad support of the people. Planning starts at the bottom, on the shop floor, on the collective farms, etc. The proposals put forward by the people are summed up by state agencies and shaped into state plans. State agencies have differing functions: some establish the national economic plans (the supreme and local representative organs, such as the Supreme Soviet of the U.S.S.R., the Supreme Soviets of the Union and Autonomous Republics, and the local Soviets of Working People's Deputies, adopt long-range, annual and other economic plans; on the basis of the aforementioned the central and local administrative agencies adopt working plans for the branches of the economy). Other state agencies put through these plans (the organs of general and branch administration, the management of offices and plants). Still others control and supervise the accurate fulfilment of the plans (representative organs of state power and organs of general administration, the Procurator's Office, state control and state planning offices, etc.). Finally, a group of state agencies apply measures of influence to malicious offenders against planned state assignments (the organs of justice).

In spite of the diversity of plans (seven-year, five-year, and annual plans for the development of the Soviet economy, plans for financing and capital investment, etc.), all are components of a single state national economic plan.

b) The development of socialist society rests on the socialist system of economy and socialist property, which are the economic foundation of the U.S.S.R.

Soviet power proclaimed socialist property sacred and inviolable and regards its protection as a cardinal task of state organs and the people, and a basic duty of every Soviet citizen. Socialist property is safeguarded not only against stealing but also against mismanagement. The Soviet state and the people take every possible care to multiply social property and see that it is correctly used in the interest of society as a whole.

This country now has over 200,000 industrial enterprises, more than 100,000 construction sites, about 6,000 state farms, and thousands of research and design offices.

c) Distribution of the social product the socialist way—in accordance with the quantity and quality of labour expended—is a most important socio-economic principle of Soviet state law. It stimulates every member of society to greater effort in labour, depending on his abilities. It offers everyone a realistic material incentive to develop social production, thereby ensuring a steady growth of the productivity of social labour, which, in the final analysis, is the decisive guarantee of the triumph of communism.

The principle of socialism demands strict control on the part of society and the state over the measure of labour and the rate of consumption. Without such control it is impossible to create conditions for a steady growth and continuous modernisation of socialist production, and consequently, for transition to communism. Without it, there can be no fair distribution of the social product. Under socialism work is a duty and a matter of honour of every able-bodied citizen, and a cardinal socio-economic factor.

This principle gave life to socialist emulation in raising productivity of labour. Socialist emulation sprang from the working people's initiative and labour enthusiasm: they have a deep interest in raising the social economy as a whole, for each looks to the fruits of his own labour,

but all see the need to control the measure of labour and the rate of consumption. That is why socialist emulation broadens the working people's co-operation and mutual assistance; it spotlights shortcomings and indicates ways of overcoming them; it helps to use leading experience in bringing about a general upsurge.

In recent years socialist emulation has risen to new heights. There is now a mass movement for communist forms of work: the working people strive not only to increase the productivity of labour, but also to widen experience, raise their cultural level, acquire good manners, etc. In communist work teams relations are based on mutual trust and a high level of consciousness. These teams often abolish the practice of punching time cards, and quality control; even wages are paid out without a cashier; each takes his pay and signs the pay sheet.

This principle of socialism, long since realised in the U.S.S.R., epitomises the equality of Soviet citizens, which is secured by the equal liberation of all working people from exploitation, the equal abolition for all of the private ownership of the means of production, the equal duty of all to work according to their ability, and the equal right of each to be remunerated in accordance with the labour expended. This determines the actual equality of Soviet people. Although it is not yet the higher form of equality under full communism, when the social product will be distributed in accordance with the needs of each, the equality already attained secures a fitting life for those who produce the material and cultural values.

The principle of socialism established in the Constitution of the U.S.S.R. is the governing factor in socialist production and distribution, and will remain such until the triumph of communism. As it is, a considerable and steadily growing portion of material and cultural benefits is distributed among the members of Soviet society regardless of the quantity and quality of their labour, that is, free. For instance, only in 1960, the Soviet state spent over

24,500 million rubles¹ on social insurance, allowances and pensions, stipends to students, education, medical services, vacations, boarding-schools, kindergartens, nurseries, sanatoriums, holiday homes, and homes for the aged. Large sums go from the state budget to finance housing construction and pay the running costs of state housing facilities. Under the Seven-Year Plan, almost 460 rubles will be spent per working person in 1965 on these social services. Besides, the urban population, which has the use of state housing facilities, pays the world's lowest rents, which average only five to six per cent of a tenant's monthly wage.

The following data give an idea of the massiveness of this free distribution of material benefits. There are now about 20 million persons who receive pensions from the state, the collective farms and mass organisations; some seven million mothers with many children and single mothers are paid state allowances; five million children are in nurseries, kindergartens and children's homes; every year 5,600,000 children spend their summer holidays in Pioneer, school, and tourist camps; 3,300,000 students of higher, secondary and labour reserves schools are provided with grants and hostels; over 3 million factory, office and professional workers and farmers are annually given treatment and accommodation at sanatoriums and holiday homes, which are paid from social insurance funds and by collective farms.

When the exploitation of man by man was eliminated and the socialist principle established, society was purged of the injustice typifying every exploiting system. That was the end of the age-old social order, under which, as Lenin put it, "either you rob the other fellow or he robs you; either you work for him or he works for you".

How fair the principle of socialism is, is most evident

¹ Here, and elsewhere, in new rubles. The ruble was rescaled at 10:1 on January 1, 1961.

in the distribution of the national income: 75 per cent of it every year goes for individual and public consumption, and the rest is used to expand and improve socialist production in town and country.

The basic principles of Soviet state law testify that the interests of society, the state and the individual are one. These interests are determined by the triumph of socialism and the consolidation of such motive forces of Soviet society as its moral and political unity, the friendship of the peoples and Soviet patriotism.

2. THE CONSTITUTION OF THE U.S.S.R., THE FUNDAMENTAL LAW OF TRIUMPHANT SOCIALISM

The Soviet Constitution incorporates the principles underlying the Soviet social and state system, and all the principles described above.

Its supreme juridical power lies in that all other laws must strictly conform to the Constitution. It is adopted and amended only by a qualified majority of the legislature. It may be amended only by a majority of not less than two-thirds of the votes in each of the Chambers of the Supreme Soviet of the U.S.S.R. (C USSR 146).

The Soviet Constitution fixes what has been achieved and gained, and in consequence develops with socialist construction. As a document primarily reflecting changes in the economy, the correlation of class forces and the class structure of Soviet society, the Constitution developed in accordance with the two main stages of the Soviet state.

The constitutional acts and the constitutions of the first stage of the Soviet state are historical documents reflecting the basic tasks and functions of the Soviet state during the transition from capitalism to socialism. These constitutional acts include the October Decrees (on peace; nationalisation of the land, industry, and banks; the elimination of the social estates and civil ranks; workers' control; the

courts, etc.); the 1918 Constitution of the Russian Soviet Federative Socialist Republic (R.S.F.S.R.), the first constitutions of the other Soviet Republics, the 1924 Constitution of the Union of Soviet Socialist Republics and other major acts.

The triumph of socialism in the U.S.S.R. entailed profound changes in the economy and class structure of Soviet society.

The new stage of development of the Soviet state called for a new constitution. A Constitution Commission was therefore set up in early 1935. In mid-1936, the draft Constitution was made public for nation-wide discussion, which lasted almost six months. On December 5, 1936, the Eighth Extraordinary All-Union Congress of Soviets adopted the new Constitution. What are its specific features?

First, the Constitution fixed the gains and summed up the results of almost 20 years of development of the socialist state.

Second, it rests on the principles of socialism and its main pillars: socialist ownership of the land, forests, factories, and other means of production; elimination of exploitation, unemployment and poverty; the right to work; the right to leisure; and other basic civil rights.

Third, it proceeds from the absence in Soviet society of antagonistic classes and the presence only of friendly classes wielding power, namely, the working class and the peasantry.

Fourth, it fixes full equality of all races and nationalities in every sphere of economic, cultural, social, and political life.

Fifth, it is an expression of socialist democracy, which is free from any reservations or restrictions and establishes the principle that only personal ability and the personal labour of each citizen determine his place in society.

Finally, the Constitution does not merely fix the civil rights and freedoms, but lays stress on their guarantees and the material conditions of their realisation.

The Constitution of the U.S.S.R., by fixing the victory of socialism, created the necessary conditions for the advance of Soviet society to communism. There now arises the need to reflect in the Constitution the radical changes in the Soviet Union's domestic life and international position, marking its entry into a new historical period—the full-scale construction of communist society. In the economic sphere, the Soviet people are creating the material and technical foundation of communism, and this ensures the further improvement of living standards. In political affairs, the main effort is to extend Soviet democracy in every direction and to draw all citizens into the administration of social and state affairs. The Soviet Union is no longer the only socialist country; there is now a socialist world, which is developing with success. All this must be mirrored by the Fundamental Law of the Soviet State, and calls for amendments and addenda to the Constitution of the U.S.S.R.

3. SOCIAL FRAMEWORK

The first chapter of the Soviet Constitution deals with the class structure of Soviet socialist society; the political foundation of the Soviet state; the organs constituting the political foundation of the U.S.S.R.; the economic foundation of the U.S.S.R.; the principle of planning the national economy; and the principles of socialism.

The social structure of the U.S.S.R. is a determining factor for Soviet state law and the Soviet legal system as a whole.

The class structure of Soviet society is described in Article 1 of the Constitution of the U.S.S.R., which says:

“The Union of Soviet Socialist Republics is a socialist state of workers and peasants.”

This means that there are no exploiting classes in the U.S.S.R., and that Soviet society consists of two friendly

classes—the workers and peasants—and the intelligentsia, which is closely linked with them.

The Soviet working class and collective-farm peasantry are entirely new types of classes; for under socialism they are free from exploitation and wield political power. The Soviet intelligentsia is a new, working intelligentsia, which serves the people.

Soviet socialist society is free from class conflicts and its characteristic is friendly co-operation of workers, peasants and intellectuals. “The political foundation of the U.S.S.R. is the Soviets of Working People’s Deputies, which grew and became strong as a result of the overthrow of the power of the landlords and capitalists and the attainment of the dictatorship of the proletariat” (C USSR 2). “All power in the U.S.S.R. is vested in the working people of town and country as represented by the Soviets of Working People’s Deputies” (C USSR 3).

At the moment some functions of state organs are being transferred to working people’s organisations (trade unions, volunteer detachments, etc.).

This does not, of course, mean that the state withers away or is weakened. The transfer of some functions of state organs to mass organisations opens up possibilities for greater direct participation of the people in government.

The Soviets truly represent the whole of Soviet society, for they are elected and controlled by the entire adult population, and are intimately connected with the masses, who are a source of new ideas and support. And in this sense they are the most massive organisations through which the people administer themselves and which attract into self-administration increasingly broader sections of the working people and their organisations. As the Soviet socialist state system develops it will be gradually transformed into a communist public self-administration.

Hence, the development of the Soviet state extends and deepens socialist democracy, because the Soviet state ap-

paratus is closely bound up with the working masses. Because the Soviets are elective and their members may be recalled when the people so desire, without bureaucratic red tape, the Soviet state apparatus is democratic in a new way.

The Soviets provide a form of organisation for the forward-looking section of the working people, and are, in consequence, the apparatus through which the vanguard stimulates, educates, and leads the great mass of working people. The Soviets, as represented by their elected members, adopt decisions and see that they are carried out.

The Soviets emerged and are developing as a state apparatus of a new, higher type, which, in the conditions prevailing in the U.S.S.R., has proved to be the best form of political organisation for communist construction.

"The economic foundation of the U.S.S.R. is the socialist system of economy and the socialist ownership of the instruments and means of production, firmly established as a result of the abolition of the capitalist system of economy, private ownership of the instruments and means of production, and the exploitation of man by man" (C USSR 4).

In the U.S.S.R., socialist property exists either as state property, or as co-operative and collective-farm property. These two forms of property are of the same type.

But there are certain distinctions between state, and co-operative and collective-farm property. First of all, they differ in subject. The subject of state property is the Soviet people in its entirety, organised in the socialist state. State property belongs to the people as a whole. The subject of co-operative and collective-farm property is the individual collective farms and other co-operatives. Co-operative and collective-farm property belongs to the collectives of working people who are members of collective farms or co-operatives, i.e., it is group property.

There is a trend towards the obliteration of distinctions between co-operative and collective-farm property,

and state property. Thus, there are 11,000 collective farms, which are shareholders of 748 joint electric power stations and 830 building organisations. Consequently, the *common* property of several or many collective farms exists within co-operative and collective-farm property alongside the property of the *separate* collective farms. Often co-operative and collective-farm property is partly fused with state property. In the Turkmen Soviet Socialist Republic, for instance, the construction of electric power stations under the Seven-Year Plan is financed not only from the State Budget, but also by the collective farms, which have contributed 210 million rubles. This points up the growing fusion of the means of production owned by the collective farms and by the people as a whole, and the integration of the two forms into communist property.

These two forms also differ in object. State property includes the land, its mineral wealth, waters, forests, the factories and mines, rail, water and air transport facilities, the banks, means of communication, large state-organised agricultural enterprises (state farms, repair and service stations, etc.), as well as municipal enterprises and the bulk of the dwelling-houses in the cities and industrial localities (C USSR 6). Among the objects of state property are also industrial and transport enterprises under construction, electric power stations, the goods turned out by state enterprises, and trading enterprises.

The property of co-operatives and collective farms includes enterprises with livestock and implements, farming machinery, and the produce, as well as buildings.

These distinctions between the two forms of socialist property—in degree of socialisation and maturity—reflect the different ways to socialism of the working class and the peasantry. State property is the higher form, for it belongs to the whole people, as represented by the Soviet state. In addition, it is greater in volume and has a bigger share in the national economy.

The two forms of socialist property hold undivided sway in the national economy. They are the basis of Soviet society's prosperity and might, and of the Soviet people's steadily rising living standards.

As has been said, socialist property consists of the main instruments and means of production, and of other socially important property. The articles of consumption are as a rule personal property.

The right of citizens to own, as their personal property, income and savings derived from work, dwelling-houses and auxiliary husbandries, articles of household and personal use and convenience, is protected by law, as is also the right of citizens to inherit personal property (C USSR 10). Consequently, personal property is acquired by work and is confined to articles of consumption; the means of production cannot be its objects. Every citizen of the U.S.S.R. is a subject of right in personal property, and is free to dispose of his personal property.

In addition to the socialist system of economy, which is the predominant form of economy in the U.S.S.R., the law permits the small private undertakings of individual peasants and handicraftsmen based on their own labour and precluding the exploitation of the labour of others" (C USSR 9). Hence, small-scale private economies are permitted, provided the owner works personally and does not exploit the labour of others.

The planning of the national economy by the state, it will be recalled, is a salient feature of the socialist system.

"The economic life of the U.S.S.R. is determined and guided by the state economic plan for the purpose of increasing the wealth of society as a whole steadily raising the material and cultural standards of the working people, and strengthening the independence of the U.S.S.R. and its capacity for defence" (C USSR 11).

The principles of production and distribution under

socialism are set forth as follows: "Work in the U.S.S.R. is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: 'He who does not work, neither shall he eat'."

"The principle applied in the U.S.S.R. is that of socialism: 'From each according to his ability, to each according to his work' " (C USSR 12).

4. STATE STRUCTURE

The Soviet state structure is the pattern of relations between the Union of Soviet Socialist Republics, as a single Union state, and its components. The Union is a federation.

"The Union of Soviet Socialist Republics is a federal state, formed on the basis of a voluntary union of equal Soviet Socialist Republics. . ." (C USSR 13).

These are its 15 constituent Republics: the Russian Soviet Federative Socialist Republic; the Ukrainian Soviet Socialist Republic; the Byelorussian Soviet Socialist Republic; the Uzbek Soviet Socialist Republic; the Kazakh Soviet Socialist Republic; the Georgian Soviet Socialist Republic; the Azerbaijan Soviet Socialist Republic; the Lithuanian Soviet Socialist Republic; the Moldavian Soviet Socialist Republic; the Latvian Soviet Socialist Republic; the Kirghiz Soviet Socialist Republic; the Tajik Soviet Socialist Republic; the Armenian Soviet Socialist Republic; the Turkmen Soviet Socialist Republic; and the Estonian Soviet Socialist Republic.

The Union, as a federal socialist state, is invested with the sovereignty of the multinational Soviet people and is a sovereign state. The jurisdiction of the Union as a sovereign state is defined by the Constitution of the U.S.S.R., which also ensures the interests of its constituent Republics. Jurisdiction is shared to facilitate defence, ensure

state guidance in communist construction, and help all the Soviet nations enjoying self-determination to open the flood-gates for new ideas and popular action.

The matters within the jurisdiction of the Union, on the strength of Article 14 of the Constitution, may be grouped as follows:

1. Matters arising from the fact that the Union is a federal state, that it is sovereign, and that its constituent Republics are also sovereign.

The Union admits new Union Republics; controls observance of the Constitution of the U.S.S.R. and ensures that the Constitutions of the Union Republics conform to the Constitution of the U.S.S.R.; with their consent it confirms alterations of boundaries between them; confirms the formation of new Autonomous Republics and Autonomous Regions within Union Republics, etc.

2. Relations with foreign countries; defence and state security.

The Union conducts the foreign policy of the U.S.S.R., defines the mode of establishing relations between Union Republics and foreign countries; safeguards the security of the state; deals with questions of war and peace; organises the defence of the country; directs all the armed forces of the U.S.S.R., etc.

3. Direction of the national economy and cultural affairs.

The Union determines the economic plans of the U.S.S.R.; approves the consolidated State Budget of the U.S.S.R.; directs the monetary and credit system, administers transport and communications of all-Union importance, and also banks, industrial, agricultural and trading enterprises, cultural and scientific institutions of all-Union jurisdiction; and exercises general guidance of industry under Union-Republican jurisdiction.

4. All-Union legislation.

The Union enacts all-Union laws, including the fundamentals of legislation on the judicial system and judicial procedure; the fundamentals of criminal and civil legislation; legislation concerning Union citizenship, and the rights of foreigners. It also determines the fundamentals of legislation concerning land tenure, public health, education, labour, marriage and the family.

The Union exercises these powers through a system of state organs.

A Union Republic is a Soviet socialist state. As a component part of the Union, each Union Republic is invested with sovereignty, limited only in matters within the jurisdiction of the Union. Beyond these, each Union Republic exercises state authority independently.

Because of the socialist character of the Soviet multinational federation, the sovereignty of the Republics complements that of the Union, which would be incomplete but for the sovereignty of the Union Republics, vested with powers for the independent exercise of state authority in accordance with their national interests. Similarly, the sovereignty of the Union Republics would be deficient but for the sovereignty of the Union, which safeguards and ensures their sovereignty.

As a sovereign state each Union Republic has:

1. The right freely to secede from the U.S.S.R.;
2. Command of its territory, which may not be altered without its consent;
3. The right to frame its Constitution in conformity with the Constitution of the U.S.S.R., but taking account of the specific features of the Republic;
4. Its own state organs;
5. The right to enter into direct relations with foreign states;
6. The right to have its own military formations;
7. Its own Republican citizenship and the right of granting citizenship;

8. Its own distinct representation in the Soviet of Nationalities of the Supreme Soviet of the U.S.S.R.; the Presidium of the U.S.S.R. Supreme Soviet includes representatives of the Union Republics in the capacity of Vice-Presidents; in accordance with the laws adopted by the U.S.S.R. Supreme Soviet in 1957, the Council of Ministers of the U.S.S.R. includes the Chairmen of the Councils of Ministers of the Union Republics, by virtue of their office, and the Supreme Court of the U.S.S.R. includes the Chairmen of the Supreme Courts of the Union Republics, by virtue of their office.

Each Union Republic, as a sovereign state, has the following features:

first, it has common borders with a foreign state; otherwise it would have been deprived of the possibility, logically and in fact, to contemplate secession from the U.S.S.R.;

second, it has a more or less compact majority of the nationality whose name it bears;

third, it has a definite size of population required to ensure its independent existence in the event of withdrawal from the Union.

Each Union Republic has broad jurisdiction. Matters within the jurisdiction of a Union Republic on the strength of its Constitution fall into four main groups.

1. Relations with foreign countries and establishment of military formations.

Each Union Republic has the right to conclude agreements with foreign states, to exchange diplomatic and consular representatives, and organise its own military formations.

2. Direction of the economy and regulation of finances.

Each Union Republic approves its economic plan and State Budget; it controls execution of the budgets of the Autonomous Republics and the local budgets; determines, on the basis of all-Union legislation, federal and local

taxes; administers insurance and savings; forms economic administration areas and Economic Councils for each; administers the banks, industrial, agricultural and commercial enterprises under its jurisdiction; directs industry and construction projects of Union-Republican and local jurisdiction; determines land tenure and the use of minerals, forests and waters; directs housing and municipal facilities, highway construction, etc.

3. Social and cultural affairs.

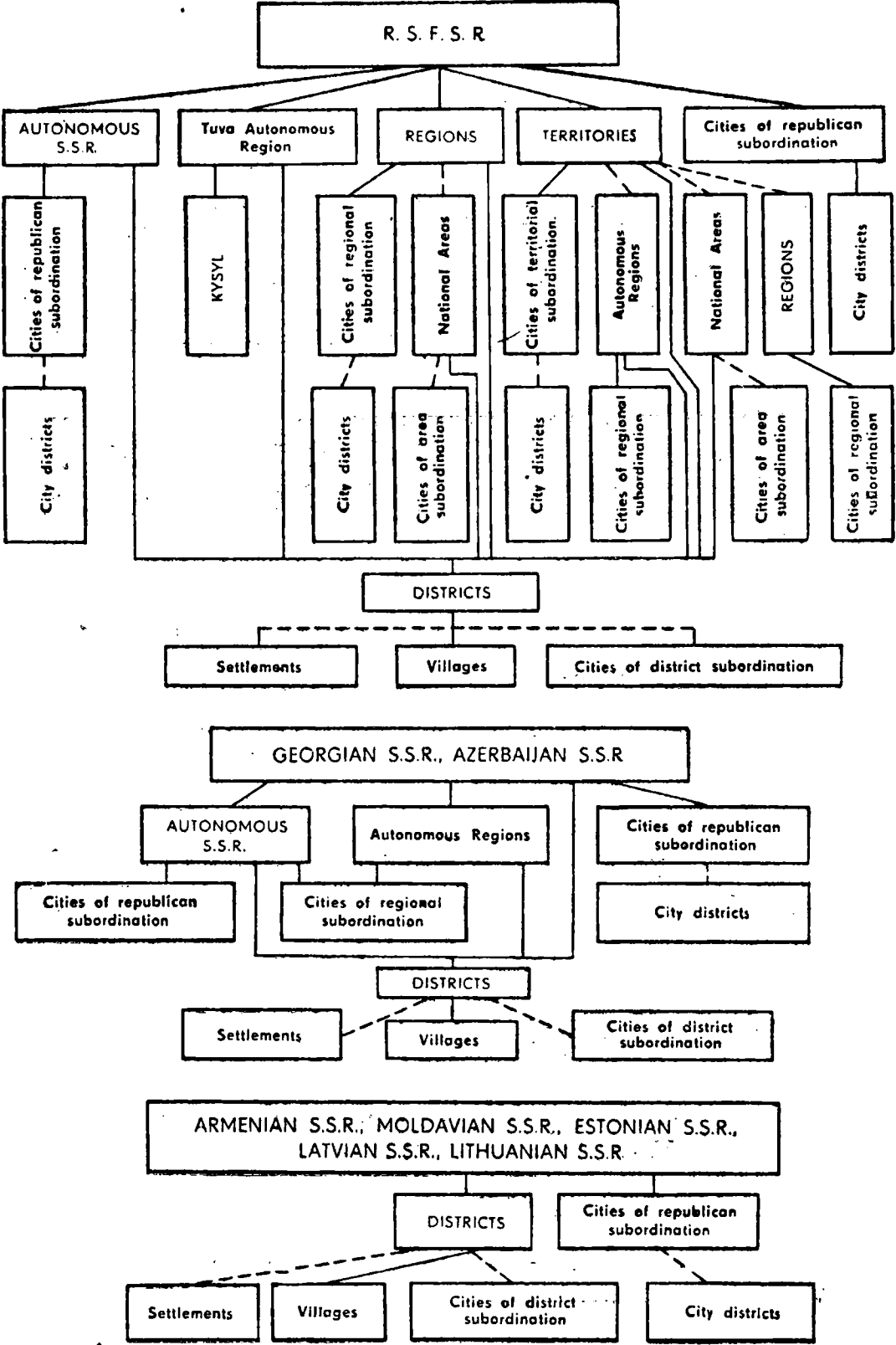
Each Union Republic directs health services, social security, primary and secondary education, and cultural, educational and scientific institutions and colleges under Republican jurisdiction.

4. Unity of the Republic, and the strengthening of its apparatus.

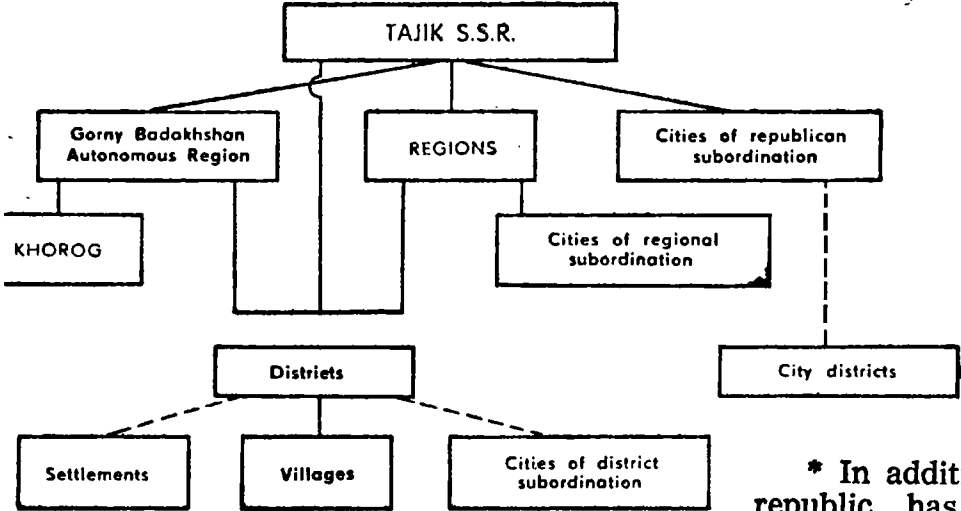
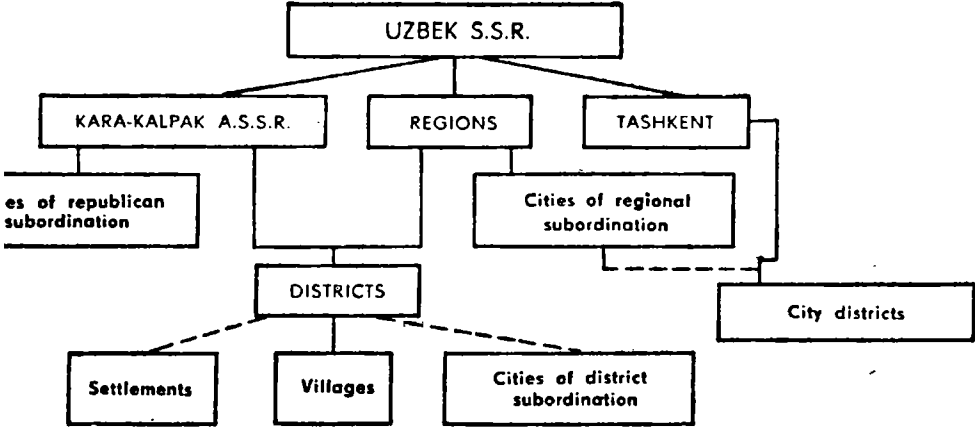
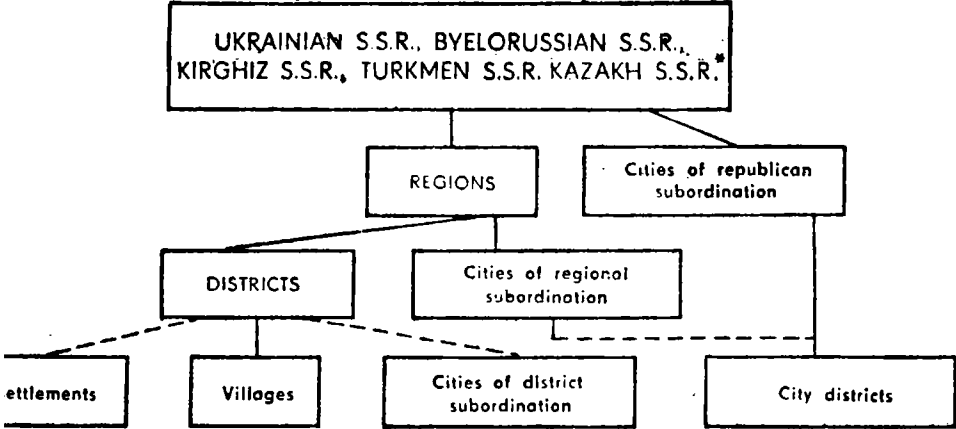
Each Union Republic frames its own Constitution and controls its observance; approves the Constitutions of the Autonomous Republics and the Ordinances on the Autonomous Regions and National Areas, submits for Union approval formation of Autonomous Republics and Autonomous Regions; establishes the administrative and territorial division of the Union Republic; exercises legislative powers in all questions within its jurisdiction; maintains law and order and protects the rights of citizens; directs the activity of local organs of power; sets up its judicial organs, etc.

The jurisdiction of each Union Republic ensures initiative and freedom of popular action in political, economic and cultural affairs. Of special importance are the powers vested in the Union Republics by the laws adopted by the Supreme Soviet of the U.S.S.R. in February and May 1957, namely, legislation concerning the judicial system of the Union Republics; adoption of civil, criminal and procedural codes; the administrative structure of regions and territories; management of thousands of industrial enterprises, construction projects and industries previously within the jurisdiction of the Union.

ADMINISTRATIVE—TERRIT



ION OF UNION REPUBLICS



----- not everywhere

* In addition to regions the republic has one territory—Tselinny Territory (virgin land area)—Ed.

An Autonomous Republic is a national Soviet socialist state within a Union Republic. An Autonomous Republic enjoys the following rights:

1. It adopts its own Constitution in strict conformity with the Constitution of the U.S.S.R. and the Constitution of the Union Republic of which it is a part, but reflecting its national features; the Constitution is submitted for approval to the Supreme Soviet of the Union Republic;

2. It has jurisdiction in the administrative, political, economic, educational and cultural spheres, within which it exercises state, including legislative, power;

3. It has its own state organs;

4. It has command of its territory: the territory of the Republic cannot be changed without its consent;

5. It has its own representatives in the Soviet of Nationalities of the Supreme Soviet of the U.S.S.R., and a representative in the Presidium of the Supreme Soviet of the Union Republic in the capacity of Vice-President;

6. The acts of the Government of an Autonomous Republic cannot be repealed by the Government of the Union Republic; this right belongs to the Government of the Autonomous Republic, its Supreme Soviet or Presidium, and also to the Presidium of the Supreme Soviet of the Union Republic.

Consequently, the jurisdiction of the Autonomous Republics extends to legislative, administrative and judicial activities. In realising these rights, with the assistance of the Union and the Union Republic, each Autonomous Republic has broad opportunities for economic and cultural development.

There are now 19 Autonomous Republics in the U.S.S.R.: the Russian Federation includes the Bashkir, Buryat, Dagestan, Kabardinian-Balkar, Kalmyk, Karelian, Komi, Mari, Mordovian, North Ossetian, Tatar, Udmurt, Checheno-Ingush, Chuvash and Yakut Autonomous Republics; Azerbaijan includes the Nakhichevan Autonomous Republic; Georgia includes the Abkhazian and Ajarian Au-

tonomous Republics; and Uzbekistan includes the Kara-Kalpak Autonomous Republic.

An Autonomous Region is a national state entity within the framework of a Union Republic. It enjoys the rights defined in its Ordinance, which is approved by the Supreme Soviet of the Union Republic, and has a special representation in the Soviet of Nationalities of the Supreme Soviet of the U.S.S.R.

There are nine Autonomous Regions in the U.S.S.R.: the Russian Federation includes the Adygei, Gorny Altai, Jewish, Karachai-Cherkess, Tuva and Khakass Autonomous Regions; Azerbaijan includes the Nagorny Karabakh Autonomous Region; Georgia includes the South Ossetian Autonomous Region; and Tajikistan includes the Gorny Badakhshan Autonomous Region.

A National Area is a national state entity which is part of a Union Republic within the framework of a region or territory. The rights of the National Areas are defined in Ordinances (uniform for all National Areas), which are approved by the Supreme Soviet of their Union Republic. Every National Area has a representative in the Soviet of Nationalities of the Supreme Soviet of the U.S.S.R.

There are 10 National Areas in the U.S.S.R. All are part of the Russian Soviet Federative Socialist Republic.

The administrative-territorial structure of the Soviet Republics is division of their territory into definite administrative units (regions, districts, etc.).

The socialist state divides its territory with an eye to efficient economic management; the political, economic and cultural interests of the country as a whole, and of its regions and districts; the further development of Soviet democracy, and, in particular, the task of bringing the state apparatus nearer to the people; and finally, specific national features and interests.

The administrative-territorial division of the Soviet Republics is now as follows: the *Region* and *District*, apart from national entities, are the main territorial units in

eight Union Republics, namely, the Russian, Ukrainian, Uzbek, Byelorussian, Kazakh, Turkmen, Kirghiz and Tajik. The Region is the Soviet Government's administrative base. The District is a key unit in the countryside. The R.S.F.S.R. also has several *Territories*, comprising regions (including autonomous). The Armenian, Georgian, Azerbaijan, Moldavian, Lithuanian, Latvian and Estonian Soviet Socialist Republics are divided into districts. The Autonomous Republics are also divided only into districts.

In every Republic the major towns are independent administrative units directly under the jurisdiction of Republican agencies. All the other towns are part of regions or districts and are under the jurisdiction of regional or district organs of power.

5. CITIZENSHIP

A person having Soviet citizenship belongs to the Soviet state and is subject to its laws. From this it flows that he acquires the basic rights and undertakes the obligations of the citizen in respect of the Soviet state, and enjoys diplomatic protection when abroad.

"Uniform Union citizenship is established for citizens of the U.S.S.R.

"Every citizen of a Union Republic is a citizen of the U.S.S.R." (C USSR 21).

The Constitutions of the Union Republics specify in addition that on their territory citizens of all other Union Republics enjoy equal rights with their own citizens.

6. SOVIET STATE ORGANS

The Soviet state fulfils its tasks and exercises its functions through state organs, which rest on the masses of working people and their organisations.

The Soviet Constitution says that the Soviets of Working People's Deputies are the organs of state power, which

are elected by the people on the basis of universal, direct and equal suffrage by secret ballot. The Soviets are direct organs of state power. Their plenary powers are the ultimate source of authority vested in all other organs of the state. But the plenary powers of the Soviets cannot be interpreted to mean that they perform all the work of the state. According to the Constitution, a certain part of the powers of authority is vested in other state organs, which operate under the control of the Soviets and are responsible to them.

Thus, the Soviets are the leading organs, whose powers differ depending on their level.

a) Higher Organs of State Power

According to the Constitution, the higher organs of state power in the U.S.S.R. are the Supreme Soviet and the Presidium of the Supreme Soviet of the U.S.S.R. In the Union and Autonomous Republics they are the Republican Supreme Soviets and their Presidiums. The higher organs of state power head the uniform system of organs of state power of the Soviets of Working People's Deputies, which constitute the political foundation of the U.S.S.R.

The Supreme Soviet of the U.S.S.R. is the highest organ of state power, which embodies the sovereignty of the whole Soviet people. It is the highest representative institution of the Soviet Federal State and is elected for a four-year term.

At the national election in March 1958, 1,378 deputies were elected to its two Chambers. Among them are 366 women (26.8 per cent); 831 deputies (over 60 per cent) are of working-class and peasant stock, and of these 614 (44.5 per cent) hold jobs at enterprises or work on collective and state farms. All the other deputies are working intellectuals. One hundred and fifty-nine deputies are workers in science, culture, literature, and the arts. A big group of deputies are specialists, such as engineers, agronomists,

livestock experts, and economists. Fifty-eight nationalities are represented in the Supreme Soviet of the U.S.S.R.

The Supreme Soviet of the U.S.S.R. exercises all rights vested in the Union of Soviet Socialist Republics in accordance with Article 14 of the Constitution, in so far as they do not come within the jurisdiction of organs of the U.S.S.R. that are accountable to the Supreme Soviet, i.e., the Presidium of the Supreme Soviet, the Council of Ministers and the Ministries. But this does not mean that the powers of the Supreme Soviet of the U.S.S.R. are in any way abridged, for it is empowered in principle to examine any question within the jurisdiction of the organs accountable to it.

The Supreme Soviet of the Union expresses the will and sovereignty of the Soviet people constituted as a state and resolves the most important questions of Soviet domestic and foreign policy.

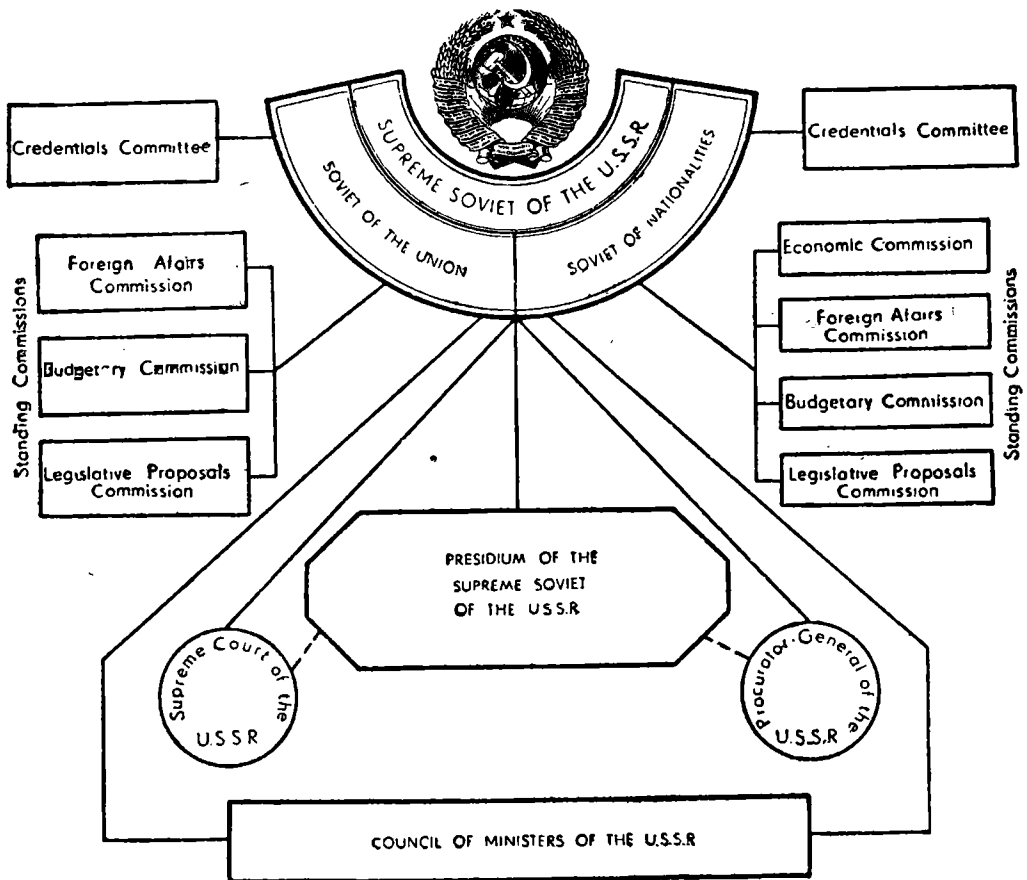
The Constitution establishes that the legislative power of the U.S.S.R. is exercised exclusively by its Supreme Soviet. This procedure fortifies socialist legality and ensures the broadest democratism in legislation.

Many draft laws which are vital to the people are examined and adopted by the Supreme Soviet of the Union after nation-wide discussion.

The Supreme Soviet of the Union does not confine itself to the promulgation of laws. It actively directs foreign policy. These recent acts of the Supreme Soviet of the Union reflect its consistent struggle for peace: the appeal to the parliaments of all states on disarmament; the decision on the unilateral termination by the Soviet Union of atomic and hydrogen weapons tests; an appeal to the Congress of the United States and the parliaments of Great Britain and all other countries on the termination of nuclear weapons tests; and other acts promoting the relaxation of international tension.

The foreign policy ties of the Supreme Soviet of the Union with the parliaments of other states have been extended considerably: in the last three years, the Soviet

HIGHER ORGANS OF STATE POWER OF THE U.S.S.R.



Union was visited by parliamentary delegations from dozens of countries, while delegations of the Supreme Soviet went to many countries. They were also furthered by the formation of a Parliamentary Group of the Supreme Soviet, which is an active member of the Inter-Parliamentary Union, an international body uniting MP's from most countries. Among the decisions of the Inter-Parliamentary Union in 1958 in which the Soviet Group took part were resolutions calling for an end to nuclear tests without delay, and the convocation of a summit conference.

The Supreme Soviet of the U.S.S.R. forms all the higher organs of the state, and directs and controls their activities. It elects its Presidium, appoints the Council of Ministers

of the U.S.S.R., elects the Supreme Court of the U.S.S.R. and appoints the Procurator-General. All these organs are accountable to the Supreme Soviet of the Union and are responsible to it. The Supreme Soviet has unlimited right of control over any part of the state apparatus.

The Supreme Soviet of the U.S.S.R., when it deems it necessary, appoints commissions of inquiry and audit on any matter. It is the duty of all establishments and persons in office to comply with their demands and to submit all necessary material and documents.

The Government or a Minister of the U.S.S.R. to whom a question of a member of the Supreme Soviet of the U.S.S.R. is addressed must give a verbal or written reply in the respective Chamber within a period not exceeding three days.

The Soviet Union is a multinational state. That is why its highest organ of state power is patterned to represent not only the common interests of all its working people, but also the specific interests of each nationality. The Supreme Soviet consists of two Chambers. One—the Soviet of the Union—represents the common interests of all the working people, regardless of nationality; the other—the Soviet of Nationalities—represents the specific interests of the Soviet peoples.

The Soviet of the Union is elected on the basis of one deputy for every 300,000 of the population. The Soviet of Nationalities is elected on the basis of 25 deputies from each Union Republic, 11 deputies from each Autonomous Republic, five deputies from each Autonomous Region and one deputy from each National Area. This ensures representation of the specific interests of all the nations of the U.S.S.R. in the highest organ of state power.

Apart from a special Economic Commission in the Soviet of Nationalities the two Chambers constitute from among their members equal standing commissions, namely: Budget, Legislative Proposals, and Foreign Affairs. They submit to the Supreme Soviet draft laws and give

it conclusions on bills and other matters submitted to the Supreme Soviet by the Government and other organs.

The following have the right to initiate legislation in the Union: deputies of the Supreme Soviet of the U.S.S.R., its Chambers and their commissions; the Presidium of the Supreme Soviet; the Government of the U.S.S.R., the Supreme Court of the U.S.S.R., the Procurator-General (who exercises this right through the Presidium of the Supreme Soviet); and also the Union Republics as represented by their higher organs of state power. They have the right to propose new legislation and also amendment or repeal of old laws. These proposals are subject to obligatory examination by the Chambers of the Supreme Soviet when approving their agenda.

Each of the Chambers also has its Credentials Committee.

The two Chambers have equal rights. They are elected for an equal term, and convene and adjourn simultaneously. A law is considered adopted when passed by both Chambers.

In the event of disagreement between the two Chambers the question is referred for settlement to a conciliation commission formed by them on a parity basis.

If the conciliation commission fails to arrive at an agreement or if its decision fails to satisfy one of the Chambers, the question is considered by the Chambers a second time. In the absence of an agreed decision of the two Chambers, the Presidium of the Supreme Soviet of the U.S.S.R. dissolves the Supreme Soviet and orders new elections (C USSR 47).

Thus, the Soviet bicameral system is based on the equally democratic principle of formation of the two Chambers, on the national principle of formation of the one, and on the principle of equality of both.

The Supreme Soviet of the U.S.S.R. is a working institution, which does not merely adopt laws but also ensures

their realisation. Twice a year it meets in session. Extraordinary sessions are convened by decision of the Presidium of the Supreme Soviet or by request of a Union Republic.

The periodical sessions give the deputies a chance to keep their jobs in the national economy, the sciences and the arts, and in the state apparatus, etc., to check the laws in action and help to put them through. There are no professional MP's in the U.S.S.R.

Leading officials of the Union, Republican and local bodies are elected to their offices, as a rule, for not more than three consecutive terms. In those cases when the personal gifts of the official in question are generally believed to make his further activity within a leading body useful and necessary, his re-election may be allowed. His election is considered valid, if not a simple majority, but no less than three-quarters of the votes are cast in his favour.

Deputies are guaranteed personal immunity: no deputy may be prosecuted or arrested without the consent of the Supreme Soviet of the U.S.S.R., or when the Supreme Soviet of the U.S.S.R. is not in session, without the consent of the Presidium of the Supreme Soviet of the U.S.S.R.

The Soviet deputy is a servant of the people, he voices and organises the execution of their will as fixed in the laws. He looks to the needs of his electors, receives their complaints and applications, and helps them in every way. It is his duty to report to his electors on his own activity and on the work of his Soviet.

N. S. Khrushchov, Chairman of the Council of Ministers of the U.S.S.R., who is a deputy to the Supreme Soviet of the U.S.S.R., often speaks at various public meetings and meets his electors. Other deputies also maintain close ties with their electors. O. V. Kvitko, a teacher, who is a deputy from the Artyomovsk Electoral District, Stalino Region, during her four-year term met her electors at 64 public

meetings. They made many valuable proposals on the construction of industrial enterprises, cultural institutions and public utilities, electrification of towns and villages, and the improvement of the pension system. These proposals were passed on to the Supreme Soviet and its commissions and were used in drafting the relevant bills. In that same period, Deputy Kvitko received 1,200 people, most of whom came about personal matters and received the help and support they required.

Senior engine-driver D. A. Peshatov is a deputy of the U.S.S.R. Supreme Soviet. In 1959, he was instructed by his electors, who are his fellow workers, on several points, including improvement of railway services, catering, and urban facilities. This required action by the central administrative agencies. Deputy Peshatov called on the Minister of Railways, and many of his proposals were accepted. During the year, he received at his office in the city Soviet more than 300 electors who came on personal business. He helped most of them with their problems.

A deputy to the Supreme Soviet is responsible directly to the electors, and a deputy who has not lived up to the trust placed in him may be recalled by his electors at any time, in the manner established by law. Such a law (Ordinance on the Recall of Deputies to the Supreme Soviet of the U.S.S.R.) was passed in 1959.

The Presidium of the Supreme Soviet of the U.S.S.R. is a collective president of the Soviet state. It is elected by the Supreme Soviet of the U.S.S.R. from among its deputies and consists of the President, Vice-Presidents (according to the number of Union Republics), a Secretary and 15 members of the Presidium.

The Presidium is accountable to, and subject to the control of, the Supreme Soviet. It is responsible for its activities to the Supreme Soviet, which has the right to annul any of its decrees and to re-elect it before the expiry of its term.

The Presidium is a standing higher organ of state power. Its powers are defined in Article 49 of the Constitution of the U.S.S.R., and may be grouped as follows:

1. In the organisational and political sphere it conducts nation-wide polls (referendums); orders new elections, convenes the Supreme Soviet, both for regular and extraordinary sessions; dissolves the Supreme Soviet of the U.S.S.R. in the event of disagreement of the two Chambers, etc.;

2. In the sphere of foreign relations and defence it releases and appoints diplomatic representatives of the U.S.S.R., receives letters of credence and recall of foreign ambassadors and ministers, ratifies and denounces treaties; in the period between sessions of the Supreme Soviet, proclaims a state of war; orders general and partial mobilisation; imposes martial law; appoints and removes the high command of the Armed Forces of the U.S.S.R.;

3. In the executive and administrative sphere it controls the Government, annuls decisions and orders of the Council of Ministers of the U.S.S.R. and the Councils of Ministers of the Union Republics if they do not conform to law; hears reports from the Government and its Ministries; releases and appoints, in the period between sessions, members of the Government on the recommendation of the Chairman of the Council of Ministers;

4. Exercises a number of special functions of supreme power: institutes orders and medals, and titles of honour of the U.S.S.R.; institutes military titles, diplomatic ranks and other special titles; admits to, and deprives of, citizenship of the U.S.S.R.; permits withdrawal from Soviet citizenship; and exercises the right of pardon.

The Constitution empowers the Presidium of the Supreme Soviet of the U.S.S.R. to issue decrees and interpret the laws in force.

Decrees amending laws in operation are subject to examination and approval by the Supreme Soviet of the U.S.S.R.

In the Union and Autonomous Republics the higher organs of state power are formed and operate on the same democratic principles as in the U.S.S.R.

Each Union and Autonomous Republic has its own Supreme Soviet and Presidium.

The Supreme Soviet, elected by the people of the Republic, is the highest organ of power and the only legislative organ.

A total of 5,312 deputies were elected to the Supreme Soviets of the Union Republics in 1959: 32.2 per cent were women; 41.9 per cent had a higher education; 22.2 per cent had a secondary education; 46.2 per cent were workers and collective farmers; and 53.8 per cent were scientists, engineers, doctors, teachers, workers of the Soviets, Party and other mass organisations, and other intellectuals. Every one of the numerous nationalities in the Union Republics has its deputies in the Supreme Soviets.

In contrast to the Supreme Soviet of the U.S.S.R., the Supreme Soviets of the Union and Autonomous Republics are unicameral, because the specific interests of all their nations are represented in the Soviet of Nationalities of the Supreme Soviet of the U.S.S.R. And this makes another chamber in the Supreme Soviets of the Union and Autonomous Republics superfluous.

Republican legislation, including the adoption of an economic plan and budget, falls within the jurisdiction of the Supreme Soviet of the Union Republic. Its laws must conform to all-Union laws. "In the event of divergence between a law of a Union Republic and a law of the Union, the Union law prevails" (C USSR 20). Likewise, laws of the Autonomous Republics must conform to the laws of their Union Republic. In the event of divergence between a law of an Autonomous Republic and a law of a Union Republic or a law of the U.S.S.R., the law of the Union Republic prevails in the former case, and the all-Union law, in the latter.

The Supreme Soviets of the Union and Autonomous Republics form their higher organs: they elect the Presidium

of the Supreme Soviet, appoint the Government and elect the Supreme Court. These organs are accountable and responsible to the Supreme Soviet of the Republic in question.

The Presidiums of the Supreme Soviets of the Union and Autonomous Republics are their collective presidents. The powers of the Presidium of the Supreme Soviet of each Republic are defined by its Constitution.

b) Organs of State Administration

Organs of state administration are parts of the state apparatus constituted by the representative organs or other state bodies empowered to do so; they exercise executive and administrative functions under the control of the representative organs. All organs of state administration are, directly or indirectly, responsible to the representative organs. Each organ of state administration is vested with some powers of government or rights to perform juridical acts on behalf of state agencies.

The organs of state administration are the Councils of Ministers, Ministries and Departments of the U.S.S.R., the Union and Autonomous Republics; the Economic Councils of the economic administration areas and their local bodies; the Executive Committees of local Soviets of Working People's Deputies and their departments; the management of state enterprises and establishments.

The Council of Ministers of the U.S.S.R. is the highest executive and administrative organ of state power. It is formed by the Supreme Soviet of the U.S.S.R. and consists of the Chairman of the Council of Ministers, the First Vice-Chairman of the Council of Ministers, the Vice-Chairmen of the Council of Ministers, the Ministers of the U.S.S.R., the Chairmen of the State Committees of the Council of Ministers (such as the State Planning Committee; the Commission of Soviet Control; the State Labour and Wages Committee; the State Committee on Occupational and Technical Training; the State Committee for Research Co-

COUNCIL OF MINISTERS OF THE U.S.S.R.

ALL-UNION MINISTRIES

- Foreign Trade
- Merchant Marine
- Railways
- Medium Machine-Building Industry
- Transport Construction
- Construction of Power Stations

State Committees of Council of Ministers of the U.S.S.R.

- Committee on Atomic Energy
- Committee for Cultural Relations with Foreign Countries
- Committee on Aircraft Technique
- Committee on Defence Technique
- Committee on Shipbuilding
- Planning Committee
- Labour and Wages Committee
- Committee on Science and Technology
- Committee on Construction
- Committee for Farm Produce Purchases
- Committee for Foreign Economic Relations
- Committee on Chemistry
- Committee on Automation and Machine-Building
- Commission of Soviet Control
- State Security Committee
- State Bank of the U.S.S.R.
- Central Statistical Board
- Committee on Occupational and Technical Training
- Agricultural Machinery and Supplies Board
- State Council on Economic Research

UNION-REPUBLICAN MINISTRIES

- Finance
- Agriculture
- Communications
- Defence
- Culture
- Foreign Affairs
- Geological Survey and Conservation of Mineral Resources
- Public Health
- Higher and Secondary Special Education

ordination, the State Committee for Cultural Relations with Foreign Countries, etc.); the Chairman of the Administrative Board of the State Bank of the U.S.S.R.; and the chief of the Central Statistical Board. In addition, as has been said, the Council of Ministers of the U.S.S.R. includes the Chairmen of the Councils of Ministers of the Union Republics by virtue of their office.

The Government is responsible and accountable to the Supreme Soviet of the U.S.S.R. and the Presidium of the Supreme Soviet of the U.S.S.R.

The Council of Ministers of the U.S.S.R. as the higher executive and administrative organ co-ordinates and directs the work of the Ministries and other agencies under its jurisdiction.

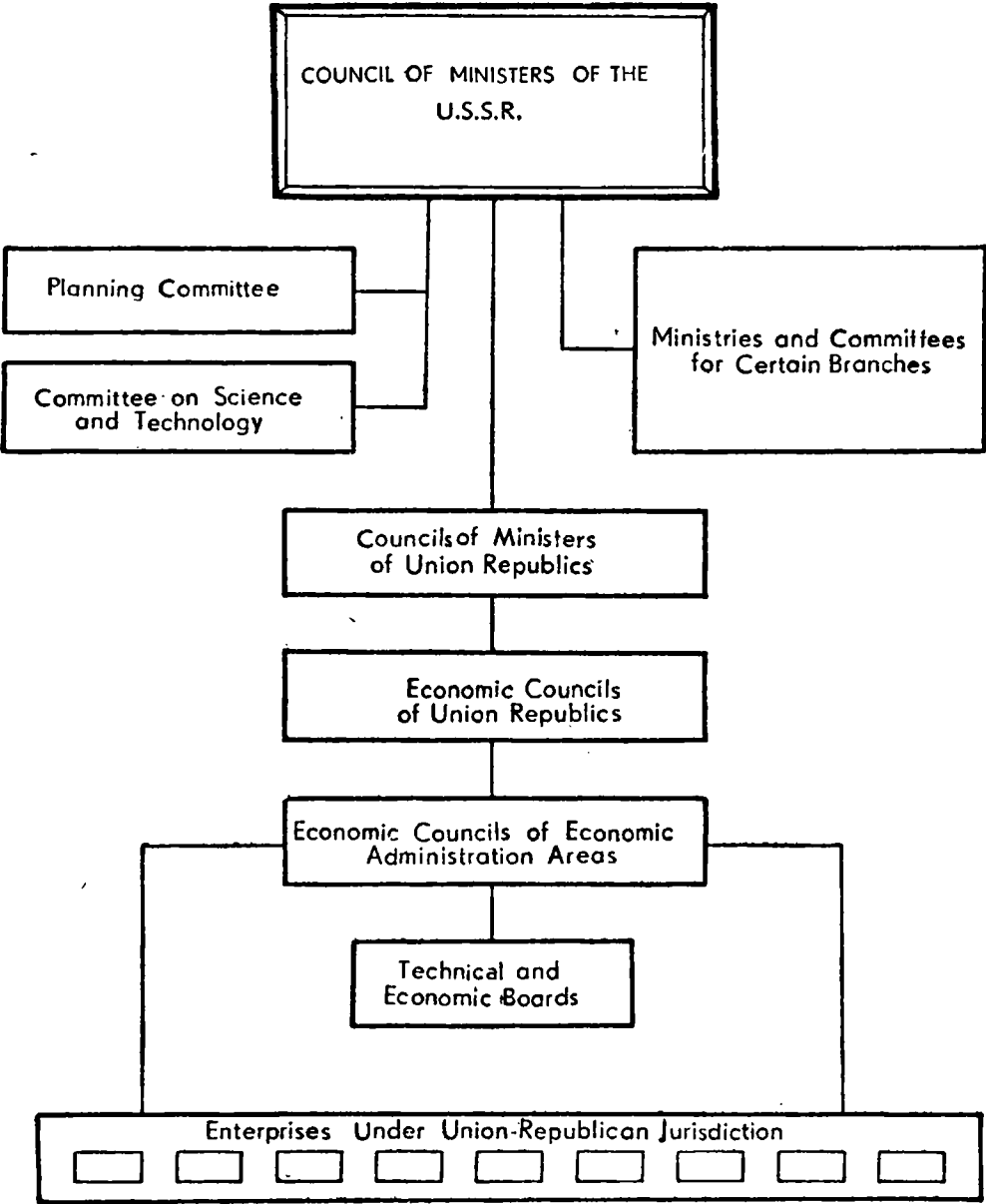
In the exercise of its powers, the Council of Ministers of the U.S.S.R. issues decisions and orders on the basis and in pursuance of the laws in operation, and verifies their execution. Its acts are binding on all citizens throughout the territory of the Union. They can be rescinded only by the Council of Ministers itself, by the Supreme Soviet of the U.S.S.R., or the Presidium of the Supreme Soviet of the U.S.S.R.

In respect of matters which come within the jurisdiction of the Union, the Council of Ministers of the U.S.S.R. as the all-Union Government has the right to suspend decisions and orders of the Councils of Ministers of the Union Republics and the Economic Councils of the economic administration areas, and to annul the orders and instructions of the Ministers of the U.S.S.R.

The Ministries of the U.S.S.R. are organs of state administration, which are headed by members of the Government and direct separate branches of state administration of the Union of Soviet Socialist Republics.

Government agencies (councils, committees and boards under the Council of Ministers) are central organs set up by the Government of the U.S.S.R. to administer economic and cultural affairs and defence. In contrast to the Min-

MANAGEMENT OF UNION-REPUBLICAN INDUSTRY



istries, these agencies are, as a rule, headed by persons who are not members of the Government.

The Ministers and chiefs of Departments, within the limits of their jurisdiction, issue orders and instructions on the basis and in pursuance of the decrees and laws of the U.S.S.R., and of decisions and orders of the Council of Ministers of the U.S.S.R., and verify their execution.

Every Minister has a consultative organ, which is called a Ministry Collegium. Its decisions are issued in the form of the Minister's order, thus emphasising the principle of one-man management.

Ministries and Departments of the U.S.S.R. fall into two groups: all-Union and Union-Republican.

All-Union Ministries and Departments direct branches and spheres of administration which are entirely within the jurisdiction of the Union, and that is why they exercise the functions conferred on them directly or through the organs they appoint, and do not have Ministries or Departments of the same name in the Union Republics. These include, for example, the Ministries of Foreign Trade, Merchant Marine, Railways and Transport Construction.

The Union-Republican Ministries and Departments direct branches of administration which come within the jurisdiction of the Union and the Union Republics, and so they operate through the Ministries or Departments bearing the same name, and administer directly only a limited number of enterprises of all-Union importance. Among the Union-Republican Ministries are the Ministries of Foreign Affairs, Public Health, Geological Survey and the Conservation of Mineral Resources, Communications, and Finance.

The Governments (Councils of Ministers) of the Union and Autonomous Republics are formed by their Supreme Soviets. They are vested with powers within the jurisdiction of the Union or Autonomous Republic. They issue decisions and orders on the basis and in pursuance of the laws in operation in the U.S.S.R. and their Union Republic (and, correspondingly, the laws of the Autonomous Re-

public), decrees of the Presidium of the Supreme Soviet of the U.S.S.R., the Presidium of the Supreme Soviet of the Union Republic (and, correspondingly, of the Autonomous Republic), decisions and orders of the Council of Ministers of the U.S.S.R. (and, correspondingly, of the Council of Ministers of the Union Republic).

They are fully responsible to the Supreme Soviet and the Presidium of the Supreme Soviet of their Republic. The Ministries and Departments of the Union Republics fall into two groups: Union-Republican and Republican.

The Union-Republican Ministries and Departments direct, under the guidance of the Ministries and Departments of the Union bearing the same name, branches of administration within the competence of the Union and the Union Republics. They operate on the principle of dual subordination: to the Ministries and Departments of the Union bearing the same name, and to the Government of their Union Republic. The Republican Ministries and Departments direct branches of administration within the jurisdiction of the Republic. They are subordinate only to the Government of the Union Republic.

A Union Republic sets up Republican Ministries and Departments to conform with the specific features of its economy and national life.

The Ministries and Departments of Autonomous Republics, in contrast to those of Union Republics, are not divided into Union-Republican and Republican. They are all organised on the principle of dual subordination: to the corresponding Ministries and Departments of their Union Republic on the one hand, and on the other, to the Council of Ministers of the Autonomous Republic.

Economic Councils of the economic administration areas direct the branches of economic activity entrusted to them and are directly subordinate to their respective Republican Economic Councils. Within their jurisdiction, they issue decisions and instructions on the basis and in pursuance of the laws of the U.S.S.R. and the Union Republic, and

decisions and orders of the Council of Ministers of the U.S.S.R. and of the Union Republic.

A decision or order of an Economic Council may be suspended by the Government of the U.S.S.R. and annulled by the Government of the Union Republic.

The Economic Councils are organs of Union-Republican jurisdiction.

c) Local Organs of State Power

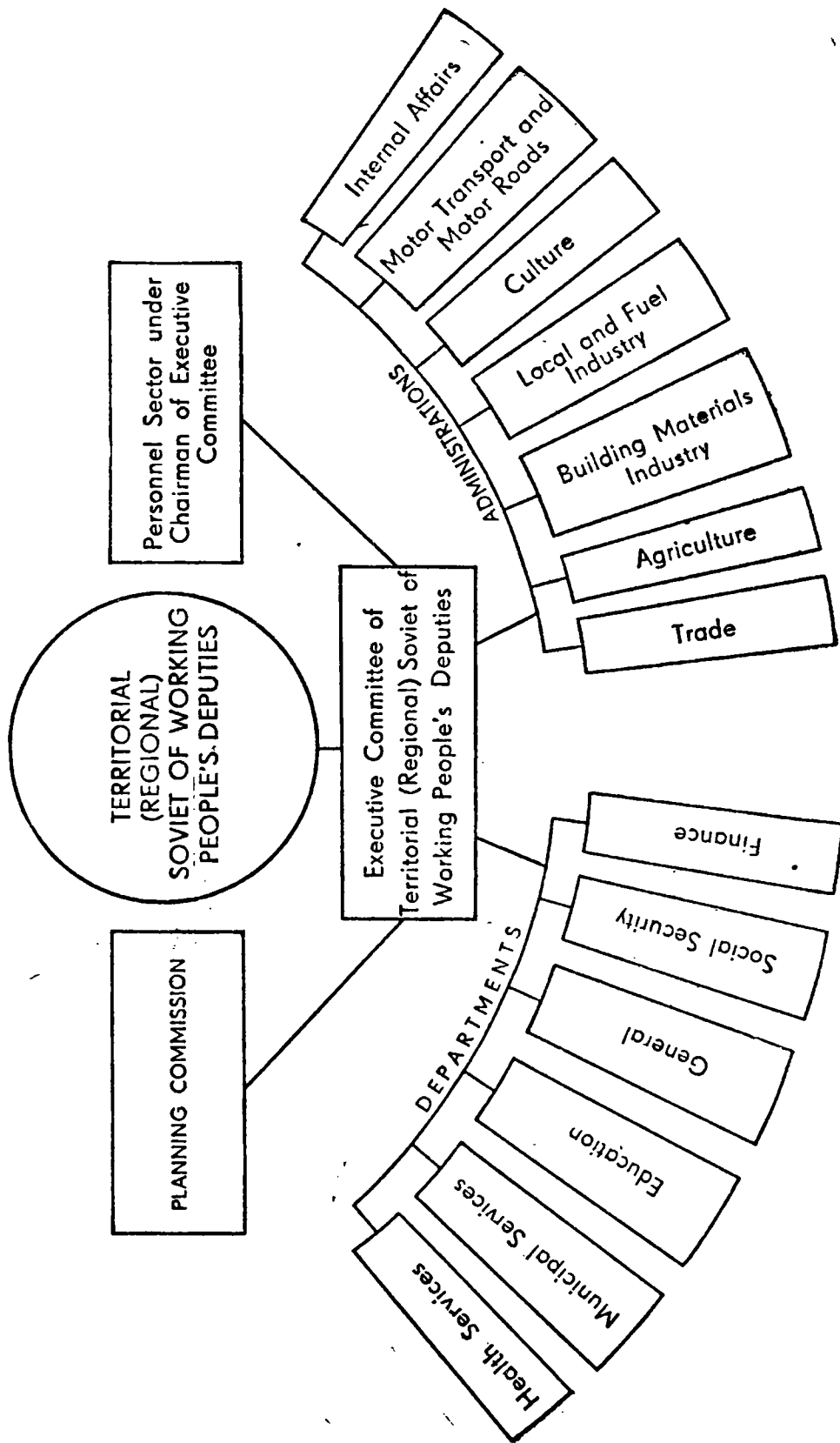
The local organs of state power, according to the Constitution of the U.S.S.R., are the *Soviets of Working People's Deputies* organised locally in conformity with the administrative divisions. They are elected by the population of the respective territorial units for a term of two years. Over 1,800,000 deputies were elected to the local Soviets in March 1961.

The Soviets of Working People's Deputies are the most massive representative organs of state power. They represent every section of Soviet society. Of their deputies 38.3 per cent are women; 60 per cent are workers and collective farmers; 25 per cent are workers in local government, Party, trade-union and other mass organisations; 15 per cent are Soviet intellectuals. The numerous nationalities inhabiting the territory of the Soviet Union are represented in the Soviets. Almost half the deputies of local Soviets have a higher and secondary education.

According to Article 79 of the Constitution of the R.S.F.S.R. and the corresponding articles of the Constitutions of the other Union Republics, the local Soviets have the following jurisdiction: 1) directing political, economic and cultural affairs on their territory; 2) determining the local budget; 3) directing subordinate administrative organs; 4) maintaining law and order; 5) strengthening the country's defence capacity; 6) ensuring the observance of the law and the protection of the rights of citizens.

In 1957 and 1958, the higher organs of state power of the Union Republics adopted Ordinances on the Local So-

**TERRITORIAL (REGIONAL) ORGANS OF STATE POWER
AND ADMINISTRATION**



viets of Working People's Deputies, specifying the legal status of the Soviets, their Executive Committees and departments of the Executive Committees. Their characteristic is a further extension of the rights of the local organs of state power.

The matters pertaining to the jurisdiction of the local Soviets show the breadth of their powers and prove that they are real masters of their respective territories.

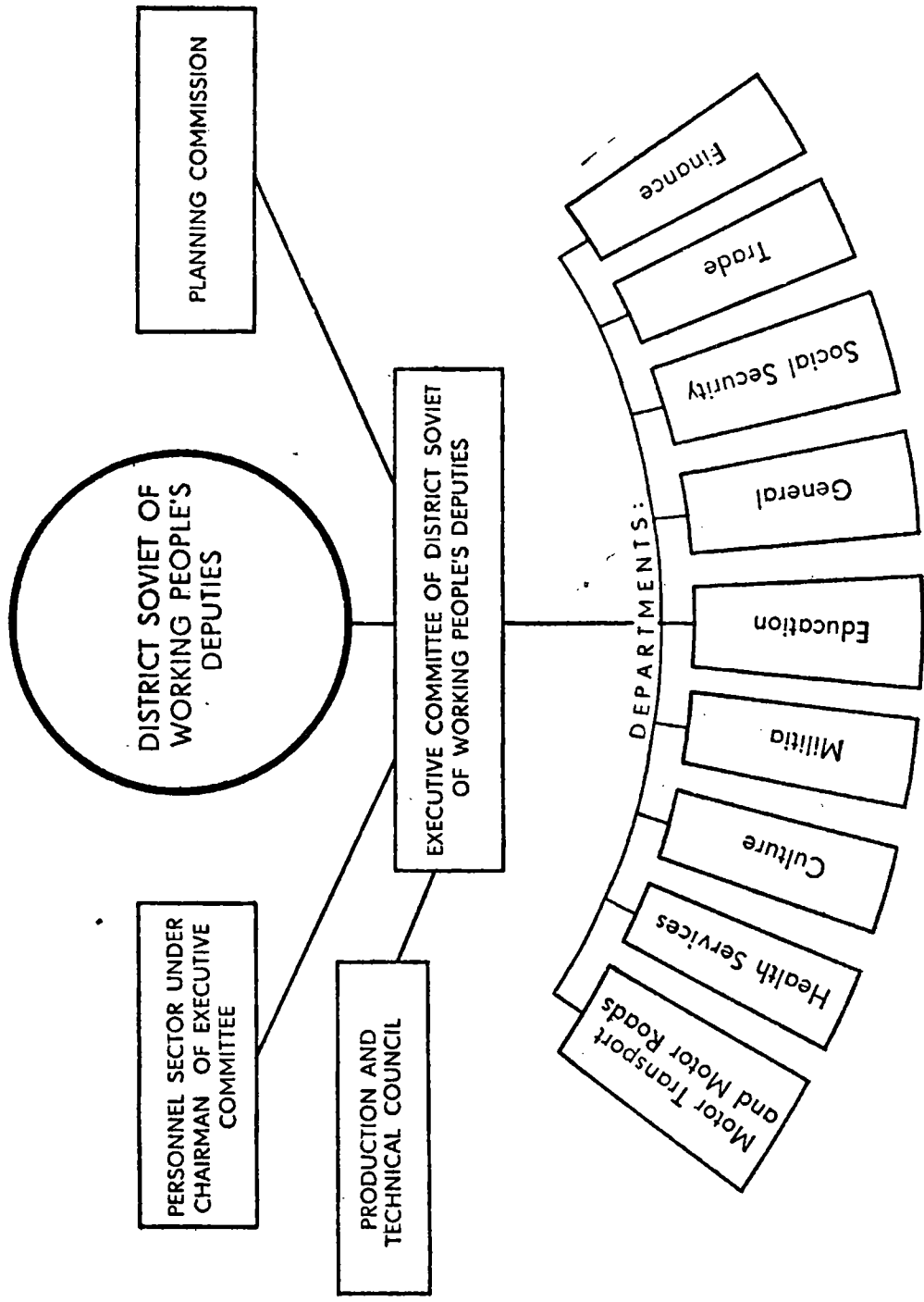
Besides, in their practical activity, the local Soviets have the right to deal with matters of broader significance. For instance, according to the new Ordinance on the Rural Soviets of the R.S.F.S.R., the village Soviet has the right to discuss not only matters of a local nature, but also of district, regional, Republican and all-Union importance, and to submit its proposals on these matters to the higher organs.

The Soviets operate under unceasing control of the masses. It is the duty of their deputies to report to their electors on their own work, and the activity of the Soviets. As is said above, electors have the right to recall their deputies in the manner established by law. For example, the Regulations Governing the Recall of Deputies to the Local Soviets of Working People's Deputies of the Moldavian Republic, dated November 29, 1957, say that "commission of acts unworthy of the high distinction of the people's representative or failure to fulfil the duties of deputy are grounds for initiating the question of recall".

Thus, in accordance with the Ordinances on the Recall of Deputies to Local Soviets of Working People's Deputies, adopted by the Union Republics in 1959, commission of acts unbefitting a representative of the people or neglect of the duties of deputy are grounds for raising the question of recall.

This right is secured to all working people's organisations and societies which nominate candidates. Their decisions are submitted either to the Presidium of the Supreme Soviet of the Republic or the Executive Committee of

DISTRICT ORGANS OF STATE POWER AND ADMINISTRATION



a higher Soviet, which within 10 days examine the proposal of recall and set the date for a poll in the respective electoral district. The voting is held on the basis of universal, equal, and direct suffrage by open ballot.

About 100 deputies to local Soviets were recalled in 1960.

The fact that the representative organs are under the control of their electors lays an imprint on their activity. The local Soviets meet in session at regular intervals and their sittings are open. The Ordinance on the Rural Soviets of the Estonian Republic says that every citizen has the right to attend sittings of rural Soviets. The Ordinances on the local organs of power require the Executive Committees to issue a public announcement in good time of every session and its agenda.

This practice ensures that the interests of the population are taken into account in settling affairs of state. The following example will illustrate this. Early in 1959, the session of a Moscow district Soviet discussed ways of improving the use and maintenance of housing facilities. While preparing for the session, the Executive Committee issued a public announcement of the session and its agenda and called on the electors to send in their proposals and remarks. Three hundred and twenty were submitted, and most of them were incorporated in the decisions of the district Soviet, and later implemented. The proposals were on new technology in housing construction, more mechanisation, better house repairs, lift services, etc.

In accordance with the Constitution of the R.S.F.S.R., regional and territorial Soviets meet in session not less than four times a year, and the district, city and rural Soviets, not less than once in every two months. The Soviets of big cities meet not less than four times a year.

A chairman and a secretary are elected for each session to conduct the proceedings. On the agenda are matters of local economic and cultural development, social services and public amenities, the local budget and the local eco-

conomic plan, reports on the activity of the Executive Committee and its departments.

Within the compass of the rights vested in them by law, the Soviets adopt decisions and issue orders on the matters discussed at the session.

At their sessions the Soviets elect their Executive Committees and form their departments and boards, which are responsible and accountable to them.

The Soviet may at any time dissolve its executive, re-elect it or recall any of its members. It may annul any decision of its executive.

On matters pertaining to their official duties deputies have the right of inquiry, which is addressed to the Executive Committee and the chiefs of its departments, and also to the management of the enterprises and establishments on the territory of their Soviet. It is their duty to give an appropriate reply at the current or following session of the Soviet.

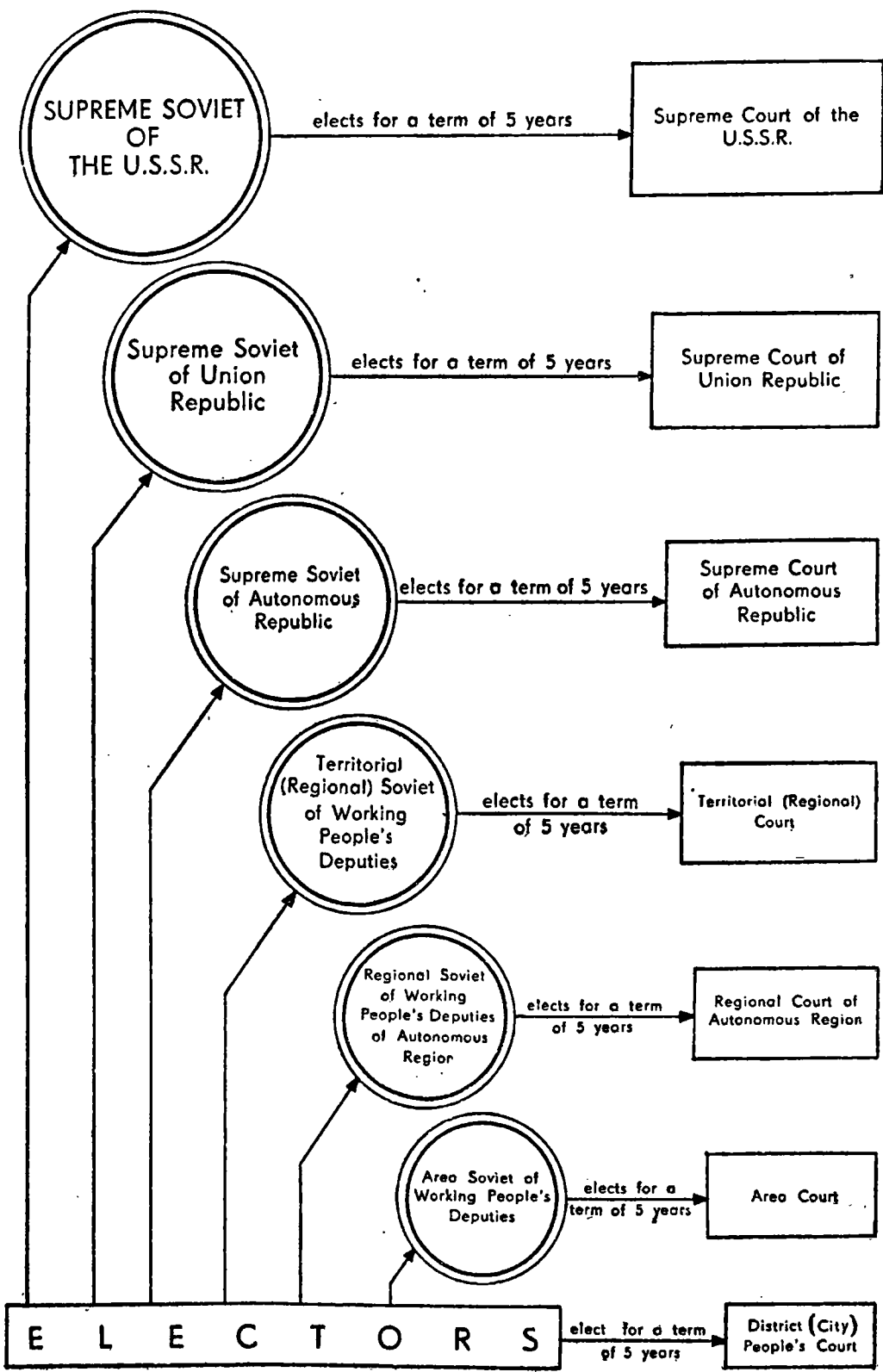
Day-to-day administration on the territory under the jurisdiction of the Soviet is performed by the *Executive Committee of the Soviet*.

Executive Committees are collective organs of the Soviets. The collective principle is of enormous importance, for it yields decisions embodying the opinion and experience of all those who take part in discussing the matters in hand, and helps to develop criticism and self-criticism within the Executive Committee.

In working out their decisions collectively, the Executive Committees are guided not only by the experience of their members, but also by the working people's demands, which are formulated by the Soviets and by the people themselves. It is the duty of the Executive Committees to implement the mandate of their electors and regularly submit reports at the sessions. In 1958, 96.2 per cent of Executive Committees in the Russian Federation reported on their activities at sessions of their Soviets.

Executive Committees adopt decisions and issue orders

SYSTEM OF ELECTIONS TO JUDICIAL ORGANS



on matters within their jurisdiction, on the basis of decisions of the Soviets or higher state organs.

Decisions are a special type of enactment by local Soviets and their Executive Committees, containing definite obligatory directives sanctioned by the Soviet or the Executive Committee within the rights vested in them by law.

The departments and boards of Executive Committees direct branches of local state activity. They operate under their Executive Committee and Soviet. The chiefs of departments and heads of boards are appointed and released by the Soviets, and, between sessions, by the Executive Committees, with subsequent approval by the Soviets.

Chiefs of departments and heads of boards issue orders within the compass of their jurisdiction and in pursuance of decisions of their Soviet or Executive Committee and of superior state organs.

From among their members the Soviets elect standing commissions for various branches of administration. Through them (and other agencies) the Soviets exercise continuous control over the administrative organs, and draft decisions on major administrative problems.

The Executive Committees of the local Soviets, their departments and boards also form their own mass organs, which help to draw the people into government.

d) The Courts

The Soviet Court is a state organ administering socialist justice designed to protect against transgression the Soviet social and state system, the socialist system of economy and socialist property, the political, labour, housing and other personal and property rights and interests of Soviet citizens, the rights and interests of state establishments, enterprises, collective farms, co-operative and other voluntary organisations, as laid down in and guaranteed by the Constitutions of the U.S.S.R., the Union and Autonomous Republics.

Justice in the U.S.S.R. is aimed at ensuring the precise and undeviating observance of the laws by all establishments, organisations, persons in office, and other citizens of the U.S.S.R.

The activities of the courts are based on these principles of consistent socialist democracy, which are fixed in the Constitution: 1) judges are elective; 2) cases are tried with the participation of people's assessors;¹ 3) judges are independent and subject only to the law; 4) in the administration of justice people of different nations are equal; 5) cases are heard in public and proceedings are oral; 6) the accused is guaranteed the right to defence.

The system of judicial organs is laid down in the Constitution of the U.S.S.R., and the details are set forth in the Fundamentals of the Judicial System of the U.S.S.R., the Union and Autonomous Republics, adopted by the Supreme Soviet on December 25, 1958.

"In the U.S.S.R. justice is administered by the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, the Courts of the Territories, Regions, Autonomous Republics, Autonomous Regions and Areas, the Special Courts of the U.S.S.R. established by decision of the Supreme Court of the U.S.S.R., and the People's Courts" (C USSR 102).

There are courts of first instance and second instance.

A court of first instance is one which first examines a case in substance and brings in a sentence or decision. Any court, from the district people's court to the Supreme Court of the U.S.S.R., may sit as a court of first instance.

A court of second instance is one which examines appeals and protests against sentences and decisions of courts

¹ In the hearing of cases by a people's court (a court of original jurisdiction) the people's assessors and the judge have equal rights in deciding issues of fact and of law; they decide the question of guilt and innocence and that of the punishment to be imposed by a simple majority vote of the whole court, i.e., the judge and the two people's assessors.—Ed.

of first instance. Appeals and protests are examined by all higher courts.

Findings of courts of second instance are final and not subject to appeal. Only in special cases may the question of reviewing a finding of a court of second instance be raised by way of so-called supervision.¹

The judicial system is headed by the Supreme Court of the U.S.S.R., which supervises the judicial activity of all inferior courts and directs the judicial policy of the state.

e) The Procurator's Office

The Procurator's Office is a special organ supervising the strict observance of law.

Its main function is defined in Article 113 of the Constitution of the U.S.S.R., which vests in the Procurator-General of the U.S.S.R. supreme supervisory power to ensure the strict observance of law by all Ministries and institutions subordinated to them, and by persons in office and other citizens of the U.S.S.R. The details are given in the 1955 Ordinance on the Supervisory Powers of the Procurator's Office of the U.S.S.R.

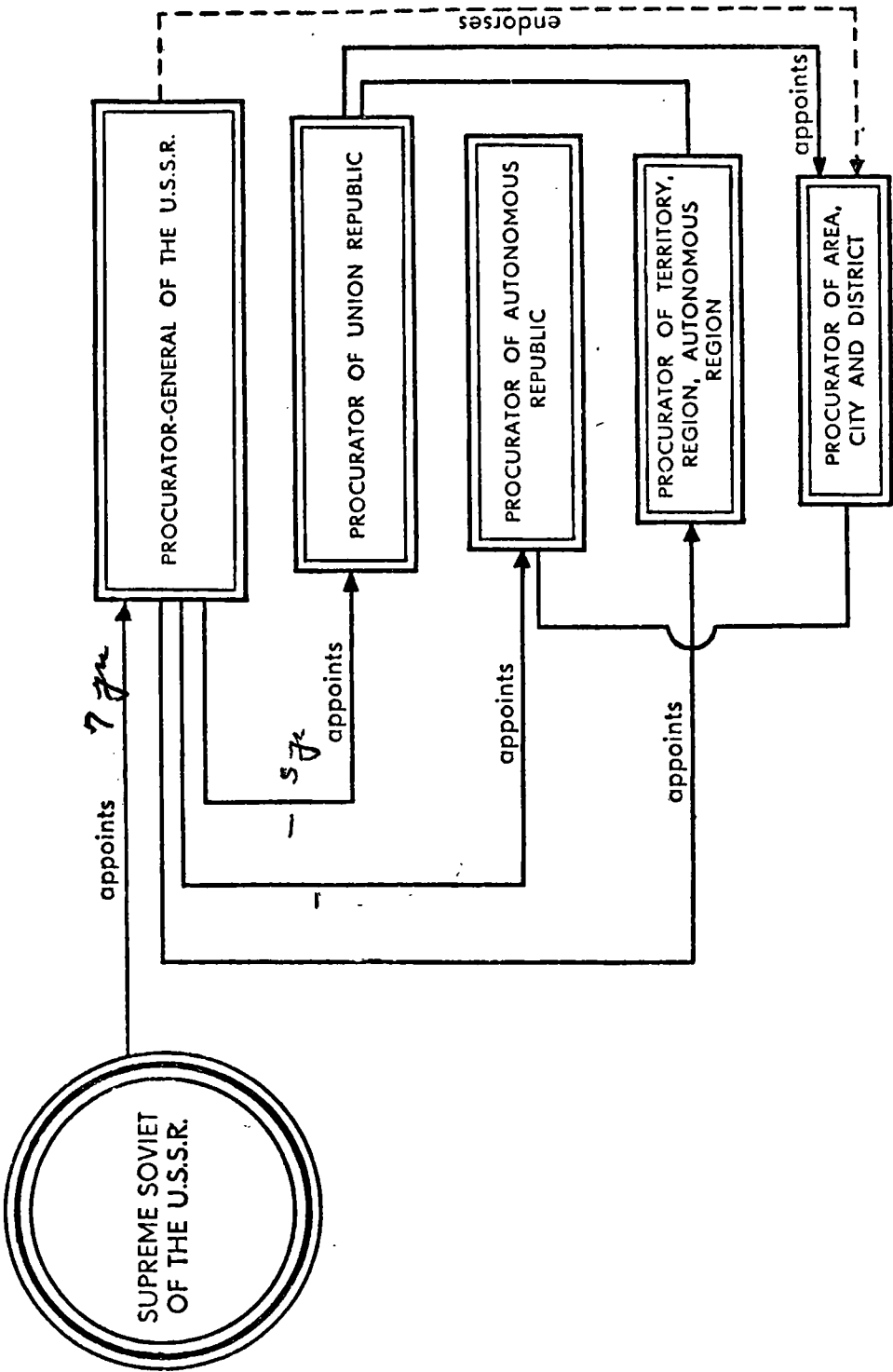
To be able to protect the unified system of legality (in spite of local differences or pressures), the Procurator's Office must be absolutely independent of the local organs of power and strictly centralised.

Its centralism lies in the fact that all its organs are subordinate only to the centre. The principle of dual subordination described above, as applied to local administrative organs, is unacceptable for the organs of the Procurator's Office, and was rejected, at Lenin's suggestion, when the Procurator's Office was first set up.

Centralisation also determines the formation of its organs: procurators are not elected but appointed. The Procurator-General of the U.S.S.R. is appointed by the Supreme Soviet of the U.S.S.R. for a term of seven years; the

¹ For details, see Chapters Eleven and Twelve.

ORGANS OF PROCURATOR'S OFFICE



procurators of the Union Republics, territories and regions, by the Procurator-General of the U.S.S.R. for a term of five years; the procurators of areas, districts and cities by the procurator of the Union Republic, with approval by the Procurator-General of the U.S.S.R., for a similar term.

It is the right and duty of the procurator to lodge protests against illegal decisions passed on the territory within his jurisdiction. But he is not empowered either to rescind or to suspend the decision protested, or yet to issue any on-the-spot directions to remove the shortcomings he has discovered. The illegal decision is annulled either by the adopting body or by a superior one.

When a breach of the law contains the elements of a crime it is the duty of the procurator to bring the guilty persons to trial. He is empowered to take steps, including arrest, to prevent criminals from evading trial. It is the special duty of the procurator to supervise the legality of arrests. No person may be placed under arrest except by decision of a court or with the sanction of a procurator (C USSR 127).

The procurator directs the preliminary investigation of cases conducted by investigators of the Procurator's Office and supervises inquiry proceedings conducted by other organs (the militia and state security organs).

In court the procurator appears as a representative of the state prosecution. It is his duty to prove the charges against the accused and to substantiate his proposal for the penalty to be inflicted on the guilty person. But if, on the strength of the material at the trial, he is satisfied that the accused is not guilty, it is his duty to withdraw the charge.

The procurator has the right to lodge protests with higher judicial organs against the sentences and decisions of courts which he finds illegal.

Finally, it is the duty of the procurator to supervise the detention of persons under arrest and the execution of sentences and decisions of the court.

7. FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

The Constitution of the U.S.S.R. lays down the fundamental rights and duties of citizens. Their fundamental rights are closely bound up with their fundamental duties, for under socialism the welfare of the individual depends on the welfare of the people as a whole. This is one reason why under socialism the interests of society and the individual are fused.

The fundamental rights and duties extend equally to all citizens. In the U.S.S.R. there are no underprivileged citizens or citizens whose legal capacity is abridged because of sex, race, nationality, origin, etc. Nor are there any citizens who are exempt from the performance of fundamental duties.

The fundamental rights and freedoms of Soviet citizens are comprehensive, they serve the interests of the people and cannot be used to harm them; they are made real by the material guarantees of the socialist system.

Socialism rejects the purely formal approach to fundamental rights and freedoms of citizens. Thus, the Soviet Constitution proclaims and guarantees freedom of the press, but it may not be used for the propaganda of war, which is regarded as a grave crime.

The right to work is a major right under socialism, for it is based on labour: labour and socialism are indivisible.

"Citizens of the U.S.S.R. have the right to work, that is, the right to guaranteed employment and payment for their work in accordance with its quantity and quality.

"The right to work is ensured by the socialist organisation of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment" (C USSR 118).

The Soviet state is steadily working to improve living standards. In the Seven-Year Plan period (1959-65) the real incomes of factory, office, and professional workers, reck-

oned per working individual, are to increase an average of 40 per cent; and the incomes of collective farmers, not less than 40 per cent, with wages in the lower brackets roughly doubled. The right to work and a fair wage are vastly important in ensuring a steady rise in living standards and man's harmonious development under socialism.

Soviet citizens have *the right to rest and leisure* (C USSR 119). It is ensured by the seven-hour working day for industrial, office, and professional workers, the six-hour day for arduous trades, and the four-hour day for especially arduous trades; annual vacations with full pay for all workers, and the extensive network of sanatoriums, holiday homes and clubs.

The Seven-Year Plan for the economic development of the U.S.S.R. for 1959-65 provides for the following steps to reduce the working day and working week: a) a seven-hour day and a 40-hour week for industrial, office, and professional workers in 1962; b) beginning with 1964, gradual introduction of the 30-hour week for underground operations and trades with harmful conditions, and the 35-hour week for all other workers, with two days off a week and a six- or seven-hour day. This is to be done with a simultaneous increase of wages. As a result the U.S.S.R. will have the world's shortest working day and the shortest working week.

The right to maintenance in old age and also in cases of sickness or disability expresses the socialist humanism of the Soviet state and its particular concern for the working man. It is ensured by the extensive development of social insurance of industrial, office, and professional workers at state expense, special forms of maintenance for disabled persons on the collective farms, free medical services for the working people, the system of disability and old-age pensions, and the provision of a wide network of health resorts for the use of the working people (C USSR 120).

The minimum old-age pension is 30 rubles a month, and the maximum, 120. Pensions are paid to women at the age of 55 years, and to men, at 60. In the current Seven-Year Plan period the minimum old-age, disability and loss of bread-winner pensions are to be raised once again.

The right to education is a vital factor in socialist society's advance to communism. The Soviet state is steadily working on a programme to overcome the substantial distinctions between mental and physical labour. This aim is met by the right to education, which gives all workers and peasants the possibility of receiving an education and acquiring culture.

"Citizens of the U.S.S.R. have the right to education" (C USSR 121). It is ensured by universal compulsory eight-year education; extensive development of general secondary polytechnical education, vocational and technical education, and special secondary and higher education on the basis of links between schooling, life and production; the utmost development of evening and extramural education; free education in all schools, the system of state stipends; instruction in the native language, and free vocational, technical and agronomic training at factories and state and collective farms.

The equality of Soviet citizens. "Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, government, cultural, political, and other public activity, is an indefeasible law.

"Any direct or indirect restriction of the rights of, or, conversely, the establishment of any direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, are punishable by law" (C USSR 123).

The Soviet Constitution guarantees equality of all Soviet citizens in the exercise of their rights and freedoms.

Women are accorded equal rights with men in all spheres of economic, government, cultural, social, and political ac-

tivity. The possibility of exercising these rights is ensured by "women being accorded an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, state aid to mothers of large families and unmarried mothers, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens" (C USSR 122).

Liberty of conscience. In order to ensure to citizens liberty of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda are recognised for all citizens (C USSR 124).

Liberty of conscience implies the citizen's right to have no religion at all and to engage in anti-religious propaganda, as well as to adhere to any creed, to change creeds and to perform religious services.

Freedom of speech, the press, assembly and meetings, street processions and demonstrations.

"In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R. are guaranteed by law:

"a) freedom of speech;

"b) freedom of the press;

"c) freedom of assembly, including the holding of mass meetings;

"d) freedom of street processions and demonstrations" (C USSR 125).

The exercise of these freedoms is ensured by placing at the disposal of the working people and their organisations printing presses, stocks of paper, public buildings, communications, etc.

The right of Soviet citizens to unite in mass organisations. In conformity with the interests of the working people, and in order to develop their initiative and political activity, citizens of the U.S.S.R. are guaranteed the right to unite in mass organisations: trade

unions, co-operative societies, youth organisations, sports and defence organisations, cultural, technical and scientific societies. The most active and politically-conscious citizens in the ranks of the working class, working peasants and working intelligentsia voluntarily unite in the Communist Party of the Soviet Union (C.P.S.U.), which is the vanguard of the working people in their struggle to build communist society and the leading core of all organisations of the working people, both public and state (C USSR 126).

The C.P.S.U., the leading detachment of the Soviet people, is a mass party. It is over eight million strong.

Citizens of the U.S.S.R. are guaranteed *inviolability of the person*. No person may be placed under arrest except by decision of a court or with the sanction of a procurator (C USSR 127).

The inviolability of the home and privacy of correspondence are protected by law (C USSR 128).

A special fundamental right secured by the Constitution of the U.S.S.R. is that of *asylum*. It is afforded "to foreign citizens persecuted for defending the interests of the working people, or for scientific activities, or for struggling for national liberation" (C USSR 129).

The fundamental civic duties, laid down by the Constitution of the U.S.S.R., are not only legal but also moral obligations of the members of socialist society.

The paramountcy of the Constitution of the U.S.S.R. is unchallengeable, and that is a most important requisite for the progress of the Soviet socialist state. That is why Article 130 specifically lays down the duty of abiding by the Constitution.

Observance of the laws is also specified in Article 130 as a fundamental duty of Soviet citizens.

In conformity with the principles of socialism, the Constitution of the U.S.S.R. stipulates that work is a duty and a matter of honour for every able-bodied citizen (C

USSR 12), and makes it incumbent on all Soviet citizens to maintain labour discipline (C USSR 130).

Soviet citizens must abide by the socialist code of ethics (the rules of the socialist way of life), which is not fixed in law (C USSR 130). They must be guided by their sense of public duty, and must be courageous and selfless in their efforts to overcome the difficulties of building the new social system; they must be patriotic.

“It is the duty of every citizen of the U.S.S.R. to safeguard and fortify public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of wealth and might of the country, as the source of the prosperity and culture of all the working people” (C USSR 131).

Universal military service is law. Military service in the Armed Forces of the U.S.S.R. is the honourable duty of Soviet citizens (C USSR 132).

“To defend the country is the sacred duty of every citizen of the U.S.S.R. Treason to the Motherland—violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state, espionage—is punishable with all the severity of the law as the most heinous of crimes” (C USSR 133).

8. THE ELECTORAL SYSTEM

The Soviet electoral system is a complex of principles and conditions under which citizens of the U.S.S.R. exercise one of their most important political rights, namely, the right to vote; it is the procedure of elections to the organs of state power.

Soviet electoral law establishes the following fundamental principles: universal, equal and direct suffrage, free nomination of candidates, and secret ballot.

Elections are universal: every citizen of the U.S.S.R. who has reached the age of 18 years, irrespective of race or na-

tionality, religion, education, domicile, social origin, property status or past activities, has the right to vote in the election of deputies, with the exception of persons certified insane and wards.

Every Soviet citizen who has the right to vote is eligible for election to the Soviets of Working People's Deputies. For the higher organs of power the age qualification is somewhat higher: a citizen who has reached the age of 23 is eligible for election to the Supreme Soviet of the U.S.S.R., and the age of 21, for election to the Supreme Soviet of a Union or Autonomous Republic.

Universality is the most important principle of Soviet electoral law, for it emphasises that Soviet power is the power of the people.

Elections are equal: equality of citizens at the polls means that 1) each citizen is entitled to one vote; 2) women have the same electoral rights as men, and members of the Armed Forces, the same rights as all other citizens; 3) equal constituencies are set up for elections to a given representative organ.

Elections are direct: each voter takes direct part in electing all Soviet representative bodies, from the rural Soviet to the Supreme Soviet of the U.S.S.R. This is a characteristic of the consistent democratism of Soviet electoral law and places all organs of power under the immediate control of the people.

Soviet electoral law ensures *freedom of nomination of candidates*. The right to nominate candidates is vested in mass organisations and societies of the working people, namely, Party branches, central and local trade-union, cooperative and youth organisations, cultural societies, and also general meetings at industrial plants, in the Armed Forces, on collective and state farms, and in villages.

Regulations governing elections provide for the nomination of several candidates in each electoral district. The question of who is to be entered in the ballot paper is de-

cided at a meeting of authorised representatives elected at enterprises, establishments, collective farms and other organisations nominating candidates.

Elections are secret: this guarantees freedom of expression of the voters at the polls, where they are safeguarded from any outside pressure. The secret ballot is an effective means of control in the hands of the electors.

Elections are so organised as to put into practice the above-listed principles of Soviet electoral law.

Universality and equality of elections are ensured in the compilation of *electoral rolls*. They are drawn up by the Executive Committees of the Soviets from 30 to 35 days before the elections, to give the electors enough time to study them. Elections are held according to constituencies and the voting takes place in election wards.

Constituencies are formed on the territorial principle, in accordance with the norms of representation for the Soviet in question.

Election wards are set up to facilitate participation of all electors in the voting.

Election commissions. These are set up to direct and conduct electoral campaigns and to supervise the observance of the electoral law, from among representatives of working people's organisations and societies and representatives elected at meetings of workers, servicemen, and peasants at enterprises, in army and naval units, in collective farms and villages.

Electoral campaigns are not directed either by officials of the Ministry of Internal Affairs or any special commissioners appointed from the capital, as is the practice in some Western countries, but by election commissions, which are formed by representative organs from among the voters themselves as nominated by public associations. They organise the elections and supervise the observance of election regulations.

Almost eight million people are members of election commissions at each election. Thus, in the electoral cam-

paing preceding the election to the local Soviets in 1959, over two million election commissions with 7,892,267 members were set up. Of this number, 74.6 per cent were non-Party people, and 25.4 per cent, Communists; 41.8 per cent were women.

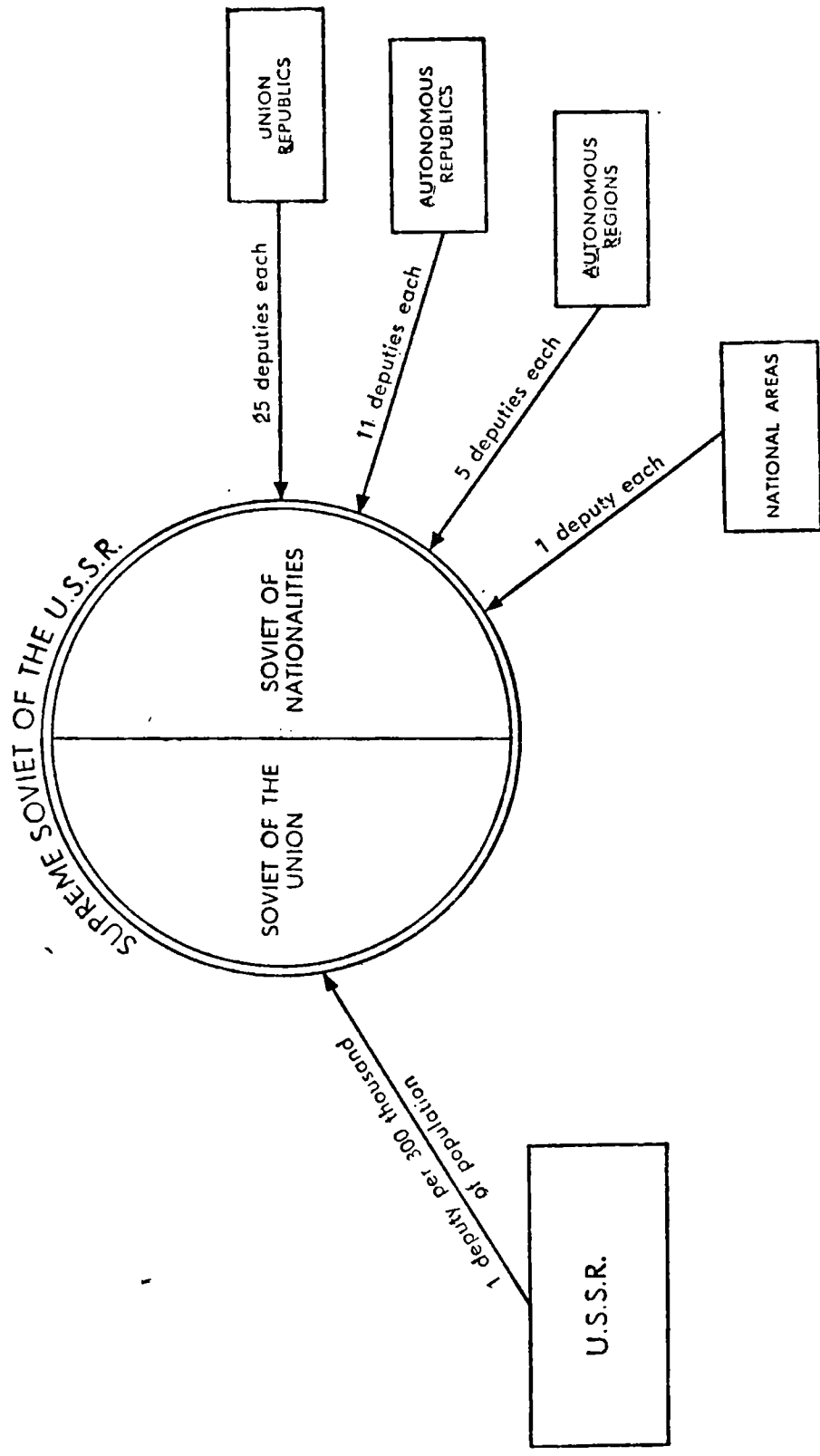
Voting takes place in the course of a single day from 6.00 a.m. to midnight. Each elector casts his vote personally.

Soviet law guarantees electors full freedom of expression at the polls. Article 109 of the Regulations Governing Elections to the Supreme Soviet of the U.S.S.R. says: "Any person who by violence, fraud, intimidation or bribery hinders a citizen of the U.S.S.R. in the exercise of his right to elect and be elected to the Supreme Soviet of the U.S.S.R. shall be liable to imprisonment for a period not exceeding two years." And Article 110 adds: "Any official of a Soviet or member of an election commission guilty of falsifying election documents, or of deliberately falsifying the count, shall be liable to imprisonment for a period not exceeding three years."

Elections are considered valid only if not less than 50 per cent of the registered electors take part. Otherwise new elections are held in the constituencies a fortnight later. A candidate is considered elected when he receives an absolute majority of the votes cast.

Here are some figures on the results of the elections to the Supreme Soviets of the Union and Autonomous Republics and local Soviets of Working People's Deputies held in March 1959: 136,373,202 voters, or 99.97 per cent of the total number of electors, went to the polls; of this number 99.76 per cent voted for the deputy-candidates to the Supreme Soviets of the Union Republics, 99.52 per cent to the Supreme Soviets of the Autonomous Republics, 99.62 per cent to the territorial, regional and area Soviets, 99.58 per cent to the district Soviets, 99.42 per cent to the city and urban district Soviets, 99.28 per cent to the rural Soviets, 99.28 per cent to the village Soviets.

THE SUPREME SOVIET OF THE U.S.S.R.
(rates of representation)



One hundred and eighty-three registered candidates failed to win a majority and were not elected to the local Soviets. New elections were held in these constituencies in accordance with the electoral law.

These data show that there is no absenteeism in Soviet elections: almost all electors went to the polls and unanimously voted for the candidates. Only in a very small number of cases, candidates nominated to the local Soviets were not returned. This is in itself proof that voting at elections is really free.

V. VLASOV, *J. Cand.*
Prof. S. STUDENIKIN, *J.D.*

Chapter Three¹

ADMINISTRATIVE LAW

1. CONCEPT OF STATE ADMINISTRATION AND SYSTEM OF ADMINISTRATIVE LAW

Concept. Soviet socialist administrative law regulates social relations arising in the organisation and exercise of state administration. This is the executive and administrative activity of Soviet state organs within their jurisdiction and on the basis and in pursuance of the laws, and is aimed at the practical fulfilment of the tasks of communist construction.

State administration extends to all areas of economic, political, and cultural activities of society. It is the broadest form of activity of the Soviet state expressed in the organisation and practical implementation of planning, accounting, control, selection and distribution of personnel, execution of laws and other legal acts, and the issue of the necessary normative and individual acts of state administration within its jurisdiction.

Soviet state administration is worked by new methods inherent in the socialist state, namely, persuasion, organisation and rallying of the people, development of their initiative, encouragement of advanced experience, demonstration by example, development of socialist co-operation, drawing of the working people into government, enhance-

¹ Sections 1 and 5 were written by S. Studenikin; 2, 3 and 4, by V. Vlasov; and 6, jointly.

ment of the role and significance of public opinion and public influence, and application of coercion by the state with respect to those who do not observe the rules of the socialist way of life. It is persuasion, and not coercion, that is brought to the fore. The governing idea in the work of the Soviet state administration is concern for the people's welfare.

State administration in the U.S.S.R. is the organisation, development, and strengthening of the new, socialist relations and their foundation, the socialist system of economy and the socialist ownership of the instruments and means of production. Lenin believed the main task of socialist state administration to be "... the positive or constructive work of setting up an extremely intricate and delicate system of new organisational relationships extending to the planned production and distribution of the goods required for the existence of tens of millions of people".¹

System. In their administrative activity state organs enter into relations: a) among themselves; b) with associations and societies of working people; and c) with citizens. These relations are regulated by the rules of administrative law, which also determine the structure, powers, and responsibilities of the administrative organs of the state.

The administrative legal rules now in operation are grouped as follows:

1. Rules determining the *general* principles of structure and activity of all executive and administrative organs;
2. Rules determining *the application of these general principles* in the concrete branches of state administration (industry, agriculture, education, etc.).

Accordingly the administrative law in force consists of two parts: *General* and *Special*.

The General Part is made up of the following sections:

1. Fundamentals of state administration;
2. Organs of state administration;
3. Civil service;

¹ V. I. Lenin, *Selected Works*, Vol. II, Part 1, Moscow 1952, p. 450.

4. Acts of state administration;
5. Measures of persuasion, encouragement and coercion in state administration;
6. Socialist legality in state administration.

The Special Part consists of the following sections:

1. Political administration;
2. Economic administration;
3. Administration of social and cultural affairs;
4. Administration of finance and credit.

2. STATE ADMINISTRATION

The Soviet state and its organs function with success because millions of working people are actively and consciously engaged in government.

Participation of the working people in government springs from the very nature of the Soviet state, which is an embodiment of socialist democracy.

It was said in Chapter One that the Communist Party and the Soviet Government, in solving problems of communist construction, constantly take counsel with the workers, collective farmers and intellectuals, draw on their practical experience and knowledge, and heed their proposals and criticism.

Standing commissions of the Soviets are a major organisational form of the working people's participation in government. Their task is to study and prepare questions of economic, cultural, and political development which are submitted to the Soviet and its Executive Committee, and to ensure control on the part of the Soviet over the fulfilment of its decisions by enterprises, establishments and organisations on the territory of the Soviet, and over the operation of the departments of the Soviet's Executive Committee. Standing commissions are accountable to the Soviet of Working People's Deputies and have the right to lay before the Soviet or its Executive Committee matters of economic and cultural development, to appoint co-rappor-

teurs on items on the agenda of the Soviet's sessions or meetings of its Executive Committee.

Standing commissions have no administrative powers and when necessary act through their Soviet or its Executive Committee.

To operate with success, standing commissions enlist the co-operation of large numbers of activists. In 1958, in the R.S.F.S.R. alone, there were nearly 121,000 standing commissions with over 600,000 deputies and 750,000 activists from among factory and office workers, collective farmers and intellectuals.

The Soviets of Working People's Deputies are also assisted by a great number of organisations, whose members come from all walks of life to take part in government. Among them are street (block) committees, committees for safeguarding housing facilities, assistance committees under house management offices, village meetings, comrades' courts, parents' committees, shop committees, law and order posts, detachments assisting the militia, and various other committees and groups assisting the organs of state administration.

Volunteer detachments have been set up at enterprises, construction sites, railways, offices, state and collective farms, schools, and with house management committees, to enlist broad segments of the working people and mass organisations in the maintenance of law and order.

Trade unions, which, Lenin said, were a school of administration, a school of economic management, a school of communism, play an outstanding part in Soviet state administration.

Trade unions are not state organisations, and operate without registration in any state office. They are the most massive organisation of the working class. Trade unions are greatly instrumental in drawing the workers into the management of production. Through them the working class controls executives who run production on the principle of one-man management.

The factory and office trade-union committees, elected by the working people of the enterprise, represent them in all matters of labour, everyday life, and culture.

Socialist emulation, organised by the trade unions together with executives, is one of the main methods of drawing the working people into the management of production.

Its results are made public and compared, experience is shared freely, and mutual assistance given generously.

Production conferences are a key factor in the management of production, for they help blend one-man management with control from below. They are standing bodies operating under the guidance of the trade unions. Their members are elected at general meetings of factory and office workers in the shops and departments and by their organisations, from among factory and office workers, trade-union members, management, members of Party and Young Communist League organisations, of scientific and technical societies, and societies of inventors and rationalisers. Their day-to-day business is carried on by a presidium numbering from 5 to 15 members elected by the production conference.

The main task of production conferences is to assist the enterprise or construction site in fulfilling and overfulfilling plans, stimulating socialist emulation, raising labour productivity, and popularising the experience of innovators. They take part in drawing up and discussing current and long-range production plans, and hear business reports. They study various matters of production, labour, wages, and output rates; suggest ways of combating waste and other shortcomings, discuss new technology, mechanisation, and application of proposals submitted by innovators and inventors; examine plans for industrial construction, housing, the development of cultural and other public facilities, and for capital investment; table proposals to improve management and efficiency, examine ways of enhancing labour protection, safety engineering, and the use of appropriations for that purpose; examine the training of personnel and improve-

ment of skills, as well as the placement of workers in accordance with their skills. They discuss ways to strengthen labour discipline.

It is the duty of management to give the production conference all-round assistance, help it prepare questions, supply reference material, remove the shortcomings pointed up by the production conference, and appoint skilled workers where such are needed.

Management organises implementation of decisions and proposals adopted by the production conference and reports on their execution at the following meeting. Economic Councils, Ministries and other superior economic bodies extend assistance to production conferences in their work and in the realisation of their decisions.

Production conferences are elected by general meetings and report on their work to these meetings at least twice a year. The general meeting has the right to recall any member of the production conference before the expiry of his term, and to appoint another in his stead.

Trade unions also call workers' meetings and industrial and technical conferences, faithfully controlling the fulfilment of their decisions and proposals submitted by factory and office workers. The unions have at their disposal substantial material and legal means ensuring their operation as a school of management for the working people at large. Thus, they have charge of state social insurance, which in the U.S.S.R. covers all industrial, office and professional workers without exception (in 1959, appropriations for social insurance totalled 6,400 million rubles).

All insurance business is handled by social insurance councils and sick visitors under trade-union guidance (the factory and office committees). Over 1,200,000 trade-union members are sick visitors, members of social insurance councils and commissions, and controllers of distribution of insurance funds.

The Young Communist League (Y.C.L.), a mass action organisation of Soviet youth, whose main task is

communist education, is active in Soviet state administration.

Y.C.L. organisations have a wide range of initiative in discussing and calling to the attention of the appropriate bodies matters concerning the work of enterprises, collective and state farms, offices and schools. The Y.C.L. is guided by the Communist Party.

Co-operatives are an important form of mass participation in Soviet state administration. Thus, agricultural producers' co-operatives (collective farms) were a powerful instrument in the socialist reconstruction of agriculture. Collective farms are voluntary organisations of working peasants embracing 40 per cent of the Soviet population. Consumers' co-operatives with about 35 million members are also organisations of working people participating in economic construction and the extension of economic ties between town and country. In this way the co-operatives help strengthen the alliance of the working class and the peasantry, and raise the Soviet people's living and cultural standards.

Societies are an important factor in state administration.

Alongside the right to unite in trade unions, co-operative associations, and youth organisations, the Constitution of the U.S.S.R. ensures Soviet citizens the right to unite in other types of mass organisations, including cultural, scientific, technical, and sports societies. These take part in fulfilling the tasks of state administration and operate in accordance with the national economic plan. Millions of workers, collective farmers, and intellectuals are members of these societies.

Scientific and technical societies are an important form of mass action by the working people. Their members are Soviet intellectuals.

The task of these societies is to stimulate scientific thinking, technical progress in industry, transport, and construction, promote the solution of agricultural problems, the

dissemination of culture and scientific knowledge, and help intensify the communist education of the working people.

Over a million men and women are members of the All-Union Society of Inventors and Innovators operating under the guidance of trade unions. In 1960 alone, over 4 million improvement proposals were submitted and more than 2.5 million inventions were realised. Their economic effect was valued at almost 1,400 million rubles.

Each society has statutes defining its tasks and terms of reference.

Inauguration and operation of societies are regulated by the legislation of the Union Republics. In the Russian Federation an Ordinance on Societies and Unions has been in force since July 10, 1932. The operation of societies is controlled by the organs of state administration.

The statutes of societies and unions are approved by the Councils of Ministers of the Union and Autonomous Republics and the Executive Committees of territorial, regional, area, city and district Soviets, depending on their place of operation, with the exception of the statutes of societies and unions within Ministries or other branches of state administration. The latter are approved on similar grounds by the appropriate Ministries and other bodies. The major societies include the Society for the Promotion of the Army, Aviation and Navy, the Union of the Red Cross and Red Crescent Societies, and the various sports societies. There are 320,000 local Red Cross and Red Crescent societies, with a membership of 24 million.

Mass organisations are guided by the organs of state administration and participate in government.

The equality of all nationalities and the friendship of the peoples of the U.S.S.R. reveal the socialist democratism of state administration. Within the framework of federation each nation independently builds its own state system, economy, and culture, which is national in form and socialist in content.

Lenin's nationalities policy, consistently put into practice,

was a powerful means of drawing the broad masses of the formerly lagging nationalities into socialist construction: it helped the nationalities of the U.S.S.R. to overcome their age-old backwardness, and gave them a say in government.

In Soviet years, a modern industry has been built in all the Union Republics. Their accomplishments in culture are also considerable. Of the 60 nations, national groups and nationalities inhabiting the U.S.S.R., 48 learned the art of writing. The languages of all the nationalities are equal: there is no single compulsory official language. Every citizen has the right to apply to any institution in his native tongue and to use it in public. Children are taught in their native language.

All Union Republics, excepting the Russian Federation, have major scientific centres, Academies of Sciences.

In higher education, the non-Russian Republics of the Caucasus and Central Asia have outstripped not only their Oriental neighbours across the border, but also many West-European states.

Democratic centralism is a most important principle concentrating leadership in the central state organs and ensuring mass participation of the working people in government.

In the Soviet state apparatus, democratic centralism means that all organs of state power are elected by the people; that deputies report to their electors and may be recalled by them; that organs of state administration are formed by the appropriate central and local representative bodies; that any person in office may be replaced; that inferior organs of state power and state administration are subordinate and accountable to their superior organs and are controlled and guided by them; that all acts of superior organs are obligatory for inferior organs, with great latitude of methods being allowed local organs in implementing these acts; that collective discussion of decisions is combined with personal responsibility for their execution.

The latter principle is a *sine qua non* of effective admin-

istration. An example is the relations between Ministers and the collegiums of Ministries. According to Article 72 of the Constitution of the U.S.S.R., a given branch of administration is entrusted to a Minister who issues orders and instructions (Art. 73) and so bears sole responsibility for the direction of that branch. He also verifies the fulfilment of adopted decisions. The collegium of the Ministry operates under the chairmanship of the Minister. Its composition is approved by the Council of Ministers on the Minister's recommendation.

The collegium examines problems of practical administration, draft state plans for the national economy, social and cultural development, and the application of new technology, hears reports of executives of the Ministry or Department, reports of innovators in production and construction, discusses drafts of the most important orders and instructions of the Minister (Department chief), and selection of personnel; it also discusses verification of the execution of laws, decrees of the Presidium of the Supreme Soviet, Government decisions and orders, and instructions and orders of the Minister (Department chief).

Collective discussion of these matters is a guarantee against lop-sided decisions, but far from excluding, it presupposes personal responsibility for the execution of decisions.

Concrete and efficient administration is another aspect of democratic centralism.

The main thing in administration is *selecting personnel and checking up on performance*.

Signals from the ranks, criticism by workers and peasants at meetings, letters and complaints are vastly important in removing shortcomings in administration. Control from below is the most effective way of verifying the work of executives.

Socialist legality is enormously important in the system of measures ensuring the proper operation of all state organs and improvement of the state apparatus.

This principle underlies the functioning of the entire state apparatus, and demands strict and precise observance of the Constitution of the U.S.S.R., Soviet laws, and acts of state organs based on them, by all state organs, persons in office, mass organisations and individuals.

All men are equal in the eyes of Soviet law. The jurisdiction of state organs, their mutual relations, and their relations with mass organisations and citizens are defined by Soviet laws and other acts of Soviet state organs on the basis and in pursuance thereof.

Socialist legality helps the Soviet state combat anti-social elements and offenders against state and labour discipline. But it goes further; it instils into the masses new, socialist legal concepts, thereby promoting the education of all working people as active builders of communist society.

Socialist planning and accounting are also fundamentals of the organisation and functioning of the Soviet state apparatus.

Socialism is unthinkable without a planned state organisation under which millions of people strictly observe a single norm in the production and distribution of goods; it is unthinkable without the strictest control on the part of society and the state over the measure of labour and the rate of consumption.

State bodies and mass organisations function on the basis of the national economic plan.

Socialist planning, closely bound up with democratic centralism, implies centralised planning and guidance in key matters, but leaves great scope for initiative by local organs and organisations which take account of local and national features and customs, etc.

The Decision of the Party Central Committee and the Council of Ministers of the U.S.S.R. of May 4, 1958 based the entire system of planning on the plans drawn up by the enterprises, construction sites, Economic Councils, local Soviets, Ministries and Departments in accordance with the target figures of the long-range plan jointly worked

out by the State Planning Committee of the U.S.S.R. and the State Planning Commissions of the Union Republics, Ministries and Departments of the U.S.S.R. and approved by the Party Central Committee and the Council of Ministers of the U.S.S.R.

Economic Councils, Ministries, and Departments of the U.S.S.R. and the higher organs of the Union Republics and local Soviets of Working People's Deputies co-ordinate the plans of the enterprises within their jurisdiction, taking account of the ties with other areas, and draw up summary long-range plans.

The Councils of Ministers of the Union Republics verify conformity of these plans with the target figures, and approve the summary long-range economic plans of the given Union Republic.

The State Planning Committee of the U.S.S.R. verifies conformity of these plans with the approved target figures and draws up an overall long-range economic plan for the U.S.S.R., which is submitted for approval to the C.P.S.U. Central Committee and the Council of Ministers of the U.S.S.R.

Besides, the State Planning Committee of the U.S.S.R. drafts and submits for approval summary balances for the supply of the stipulated types of goods, materials, equipment and raw materials.

Fulfilment of state plans ensures the all-round development of the economy and culture in all economic administration areas, in all the Union Republics and in the U.S.S.R. as a whole.

The Presidium of the U.S.S.R. Supreme Soviet has made the Councils of Ministers and the State Planning Commissions of the Union Republics together with the Economic Councils fully responsible for the fulfilment of plans and assignments for delivery of goods to other Union Republics, for national needs and export.

Non-fulfilment of plans and assignments for delivery of goods to other economic administration areas or Union Re-

publics and for national needs by executives of enterprises, economic organisations, councils, departments and Ministries is a serious violation of state discipline and entails disciplinary, financial or criminal responsibility. Heavy disciplinary penalties or fines not exceeding three months' wages are imposed in the manner prescribed by the law of the Union Republics for non-fulfilment of such plans without good reason.

Criminal proceedings are instituted against persons in office guilty of repeated non-fulfilment of such plans and assignments without valid reason.

3. LEGALITY IN STATE ADMINISTRATION

Observance of socialist legality in Soviet state administration is ensured by:

- 1) control and performance check-up;
- 2) supervision by the Procurator's Office;
- 3) activity of judicial organs;
- 4) activity of state and departmental arbitration;
- 5) control by the people;
- 6) appeals against illegal actions of agencies or persons in office.

Control and performance check-up are most indispensable in state administration and have become the main methods of ensuring socialist legality. Check-up is effective when performed by the executive himself, and it is his duty to organise regular check-ups on the performance of his own directives and those of superior organs.

The fact that groups of controllers and inspectors are directly subordinate to Ministers or heads of Departments does not mean that the duty of checking-up on performance is shifted to these groups. The chief himself is responsible for the performance check-up, while the controller and inspector group follows his directives.

Control is either external, when carried out by various organs of state administration, or internal, when effected

by the personnel of a given agency or enterprise. In either case it is administrative because it is exercised as a function of the given organ. Control is public when the people are invited to exercise it. Constitutional control has a place apart.

Constitutional control. The Supreme Soviet of the U.S.S.R., the Supreme Soviets of the Union and Autonomous Republics do not only exercise legislative power; they also direct and exercise constitutional control over the activities of the higher organs of administration of the U.S.S.R., the Union and Autonomous Republics, and supervise execution of the laws. The higher organs of state power in the U.S.S.R. control observance of the Constitution of the U.S.S.R. and ensure conformity of the Constitutions of the Union Republics with the Constitution of the U.S.S.R. (C USSR 14 d). The higher organs of state power in the Union Republics control observance of the Constitutions they frame, and approve the Constitutions of the Autonomous Republics.

The Supreme Soviet of the U.S.S.R., the Supreme Soviets of the Union and Autonomous Republics have the right to control the state apparatus and appoint commissions of inquiry and audit on any matter they deem necessary.

The Supreme Soviet of the U.S.S.R. and the Supreme Soviets of the Union and Autonomous Republics check up on the execution of their legislative enactments by lower organs of state power, and by organs of state administration when questions are discussed at sessions and in the course of day-to-day guidance by their Presidiums of the functioning of their subordinate bodies.

Constitutional control is expressed in the fact that the Soviet Government is accountable to the Supreme Soviet of the U.S.S.R.—the national parliament.

It was said above that the Council of Ministers of the U.S.S.R. is responsible and accountable to the Supreme Soviet of the U.S.S.R., and between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet. Similarly

the Councils of Ministers of the Union and Autonomous Republics are responsible and accountable to the Supreme Soviets and the Presidiums of the Supreme Soviets of the Union and Autonomous Republics.

The Council of Ministers or a Minister of the U.S.S.R. to whom a question of a member of the Supreme Soviet of the U.S.S.R. is addressed must give a verbal or written reply in the respective Chamber—the Soviet of the Union or the Soviet of Nationalities—within a period not exceeding three days. The Council of Ministers or Ministers of a Union or Autonomous Republic to whom a question is addressed by a deputy of the Supreme Soviet must give a verbal or written reply in the Supreme Soviet of the Republic within a period not exceeding three days.

The Council of Ministers of the U.S.S.R. and the Councils of Ministers of the Union and Autonomous Republics issue their orders and instructions only on the basis and in pursuance of laws.

The higher organs of state power as representative bodies may annul the orders and instructions of the Council of Ministers of the U.S.S.R. and Councils of Ministers of the Union and Autonomous Republics if they do not conform to law.

The right to annul the acts of local representative bodies is vested in the appropriate superior Soviets of Working People's Deputies and the Presidiums of the Supreme Soviets of the Union and Autonomous Republics.

The Councils of Ministers of the Union and Autonomous Republics have the right to suspend but not to annul the orders and instructions of the Soviets.

The Councils of Ministers of the Union and Autonomous Republics are empowered to annul orders and instructions of the Executive Committees of the Soviets. This is in complete accord with the principle that superior organs of state administration direct the lower organs. This right is also enjoyed by superior Executive Committees of the Soviets in respect of lower Executive Committees.

The Council of Ministers of the U.S.S.R. has the right to annul the orders and instructions of Ministers of the U.S.S.R., chiefs of Departments and other special organs of administration of the U.S.S.R., while the Councils of Ministers of the Union and Autonomous Republics enjoy the same right in respect of the orders and instructions of Ministers, heads of Departments and other special organs of administration of the appropriate Republics.

Like laws, state administrative acts are juridical acts regulating social relations. But state administrative acts have force only when they are in conformity with the law.

The law may annul, amend or suspend any state administrative act, but not vice versa.

The law is incontestable and compulsory for all. Only the lawgiver may invalidate, modify or stay the operation of a law. A state administrative act may be invalidated, suspended or amended not only by the organ adopting it but also by superior organs of power or administration duly authorised to do so. But the difference in the juridical force of a law and a state administrative act does not at all imply that they are not equally obligatory. All state administrative acts, if not in contradiction to the law, are equally obligatory for execution.

Control by the bodies of the U.S.S.R. Council of Ministers. State control is exercised by the State Planning Committee of the Council of Ministers of the U.S.S.R.; the State Committees of the Council of Ministers on labour and wages, construction, research co-ordination, foreign economic relations, chemistry, farm produce purchases, aircraft technology, defence technology, radioelectronics, electronic technology, shipbuilding, automation and machine building, the State Council on Economic Research, etc.

All bodies of the Council of Ministers of the U.S.S.R., whose task it is to plan and co-ordinate the functioning of the Ministries and Departments, also control and inspect

the Ministries and Departments within their competence, and are empowered to issue instructions, which are obligatory for the Ministries and Departments.

It is the duty of the State Committees of the Council of Ministers of the U.S.S.R. to exercise control over the functioning of all Ministries, Departments, and Economic Councils in the following spheres: efficient and economic use of resources; observance of approved plans and established standards of expenditure; reduction of construction costs; improvement of work; introduction of progressive technology into the national economy; timely fulfilment by ministries and Departments of state reserve stocking plans for materials and foodstuffs in the specified quantity, quality and assortment; implementation by Ministries and Departments of measures to raise the productivity of labour and improve labour organisation and wage systems.

Control by the Commissions of Soviet Control of the U.S.S.R. and the Union Republics.

It is the duty of the Commission of Soviet Control of the Council of Ministers of the U.S.S.R., on behalf of the Government, to verify the actual performance of its major economic decisions; study the structure and operation of the state apparatus; control realisation of a strict policy of economy, and the correct and expedient spending of money and materials. It is the duty of the Soviet control bodies to help overcome narrowly local or purely departmental trends clashing with state interests, and actively to combat red tape.

The Commission of Soviet Control of the Council of Ministers of the U.S.S.R. consists of a chairman appointed by the Supreme Soviet of the U.S.S.R., deputy-chairmen and members of the commission appointed by the Council of Ministers of the U.S.S.R. Among its members are one representative of the All-Union Central Council of Trade Unions and one of the Central Committee of the Young Communist League. The Commission meets regularly to examine the organisational aspects of control, the results

of check-ups, and to hear reports from department chiefs. It adopts pertinent decisions on the questions discussed.

The Commission of Soviet Control enlists broad masses of factory and office workers and collective farmers, and is assisted by local Soviets and mass organisations. Similar duties are performed by the Commissions of Soviet Control of the Councils of Ministers of the Union Republics within their territory.

Groups of controllers, numbering from five to ten persons, operate in the major economic administration areas, and are under the direction of Commissions of Soviet Control of the Union Republics.

The main task of the Soviet control bodies is to eliminate on the spot any shortcomings in the work of government, economic and co-operative organisations and to take steps to prevent their recurrence in the future. Only questions requiring the Government's decision are submitted for its consideration.

Control is either preliminary or subsequent. Preliminary control is designed to forestall any shortcomings or omissions in acts and execution of assignments by establishments, enterprises and organisations. It boils down to an advance check-up on estimates, plans, orders, and disbursement vouchers, before issue of material values or their realisation in any form. When preliminary control reveals that an expense item is illegal or some action incorrect, the planned disbursement or issue of material values may be arrested in whole or in part.

Subsequent control is a follow-up verification of cash vouchers and invoices after disbursement or issue and is carried out in the form of planned or extraordinary audits which not only help discover poor management but also point up latent reserves which are then put to productive use.

At all events, factory and office workers and collective farmers at large are invited to take part in on-the-spot verification of items such as execution of government

decisions, reports on red tape, receipts of material values at warehouses and depots, storage and actual stocks of material values and cash in hand, actual performance of work; and the study of the operation of the state apparatus and introduction of new technical ideas.

With the development and ramification of Soviet state administration, special organs are set up to carry out state control in a given branch of work, such as the control and auditing departments of the Ministry of Finance of the U.S.S.R. and the Ministries of Finance of the Union Republics, various specialised state inspection offices (commercial, sanitary, etc.).

In contrast to the Commissions of Soviet Control, the specialised organs exercising state control are strictly limited to a given branch of state administration or by special terms of reference. State control by Commissions of Soviet Control also extends to the specialised organs of branch control.

Financial and credit control. This type of control is designed to ensure precise and timely fulfilment of financial obligations to the state, utmost thrift through rational use of the people's resources, expenditure of budgetary assets and credits for their specified purpose, strict economy in production, circulation costs and maintenance of managerial staff. Efficient financial and credit control forestalls incorrect and illegal spending, and in cases of violation, precludes further injury to the state: the guilty are called to account and made to restore the losses inflicted.

Day-to-day financial control is exercised by the Ministry of Finance of the U.S.S.R., the Ministries of Finance of the Union and Autonomous Republics and their local agencies, the State Bank, the all-Union Capital Investment Bank (Construction Bank), inter-departmental control organs, accounting departments of enterprises and establishments.

Control and auditing offices of the Ministry of Finance of the U.S.S.R. and of the Ministries of Finance of the

Union Republics are a very important element in the system of financial control.

The State Bank of the U.S.S.R. is also an important factor in financial control: it extends short-term credits; it is the U.S.S.R.'s clearing and cashing house, and the only bank of issue.

The State Bank of the U.S.S.R. controls the fulfilment of plans of production and goods turnover, financial and accumulation plans, the use by enterprises and economic agencies of their own assets and loan funds for their designated purposes, and the application of cost accounting and the disbursement system.

The Construction Bank controls the designated use of state funds earmarked as capital investments; it supervises fulfilment of the national plan for the commissioning of industrial facilities and use of basic assets, reduction of construction costs, and operation in keeping with projects, estimates and financial plans. It also helps improve cost accounting and the disbursement system in construction.

Financial control is organised within all Ministries, Departments, organs of state administration of the local Soviets, and in economic organisations. It consists of a comprehensive audit of subordinate establishments and enterprises at least once a year.

Financial control is also a part of the duties of chief and senior accountants at establishments and enterprises, who are responsible for the observance of financial and budgetary rules, timeliness and quality of accounting, drawing up of documents and book-keeping.

Control by inspection offices. Inspection offices are organs of state administration exercising control and inspection of state establishments, enterprises and mass organisations, regardless of departmental subordination. They supervise not only observance of the law, government decisions and departmental acts, but also proper selection of ways and means, and their profitableness.

These inspection offices discover infringements and apply

measures of compulsion as prescribed by law; they issue instructions to the establishments and organisations under supervision, thereby helping them to fulfil the approved plans.

The inspection offices are empowered to visit the institutions subject to their control, to take samples and make seizures of materials for the purposes of analysis or expertise, to take stocks and check cash balances, to demand of persons in office and private persons explanations and submission of the necessary materials, in certain cases to stop the work of enterprises, etc.

In accordance with the codes of criminal procedure now in force in the Union Republics, inspection offices, within their jurisdiction, enjoy the rights of organs of inquiry.

Procuratorial supervision. As was said in Chapter One, supreme power of supervision over the strict observance of the law by all Ministries and establishments subordinated to them, as well as by persons in office and private persons, is vested in the Procurator-General of the U.S.S.R.

Procuratorial supervision over legality in administration is known as general supervision, as distinct from judicial supervision, which deals with the acts of the judiciary.

General supervision is exercised in various ways, of which the main are:

- 1) examination of the acts issued by the pertinent organs and organisations and submitted to the Procurator's Office;
- 2) on-the-spot verification of acts;
- 3) the procurator's participation in sittings of the Executive Committees of local Soviets with the right of deliberative vote.

It is the duty of the procurator to accept and examine applications and complaints from citizens concerning violations of the law, to verify them within the time limits provided for by law, to take steps to restore the infringed rights and safeguard the legitimate interests of citizens.

The procurator files protests against acts contradicting the law. It is his duty to see that "... not a single decision

passed by any local authority runs counter to the law, and only from this aspect is it his duty to challenge every illegal decision. He has no right to suspend such a decision; he must only take measures to secure that the interpretation of the law is absolutely uniform throughout the Republic".¹

The lodging of the protest is not the end of the procurator's action. It is his task to bring about an annulment of the illegal acts. He does not confine himself to the lodging of the protest or bringing the guilty to book, but determines why the law was violated. He examines cases of violation of socialist legality reported in the press, and maintains constant contact with the numerous mass organisations assisting the Procurator's Office in its work.

The procurator's protest against a decision instituting administrative action against any person stays the application of the administrative penalty pending consideration of the protest by the appropriate body.

To eliminate breaches of the law and their causes the procurator also makes representations to state organs and mass organisations, which must within one month consider them and take the necessary measures.

In contrast to the organs of state administration, and specifically those exercising special control functions, the Procurator's Office does not verify the work of state bodies, audit or inspect, for that would mean interference by the Procurator's Office in the day-to-day activity of such bodies and its investment with administrative functions, something quite contrary to the fundamental purposes of the Procurator's Office.

As a supervisory organ it sees that the appropriate bodies, organisations and enterprises do not issue illegal decisions, orders or instructions, and that laws and government decisions are not violated.

¹ V. I. Lenin, *Selected Works*, Vol. II, Part 2, Moscow 1952, p. 684.

If the procurator is in possession of facts testifying to non-observance of a law, decision or instruction, or to shortcomings in the work of an enterprise or establishment, he asks the proper organs for a commission of inquiry, and calls attention to the need of clarifying the matters in question and informing him of the results of the check-up.

Moreover, the procurator is empowered to conduct an on-the-spot check-up of execution of the laws in connection with applications, complaints, and other information concerning violations of the law.

The procurator has the right to demand of anyone explanation in person concerning breaches of the law.

Depending on the nature of the violation, the procurator either institutes criminal proceedings against persons in office or private persons committing offences, or sees that administrative or disciplinary action is taken against them. When necessary, the procurator takes steps to ensure the compensation of material losses inflicted by the breach of the law.

The courts in ensuring legality. The law provides for instances when disputes arising in the functioning of organs of state administration are settled by judicial organs, or for instances when judicial organs, while not deciding in substance matters which arise in judicial proceedings, are vested with the right of drawing the attention of the organs of state administration to such matters. Thus, for example, having brought to light, in the examination of a case, shortcomings in the work of some organ of state administration, enterprise or establishment, the court enters a special finding in which it points out the shortcomings discovered and duly informs the head of the organ concerned. The latter is obliged to examine the finding and to take the necessary measures, duly informing the court in question.

In other instances, the court decides matters on their merits. Thus, the court examines in judicial investigation such matters as appeals from the acts of persons in office,

organs of power or incorrect entries in the records of the Civil Registry Office.

The courts also examine actions brought against illegal issue of housing warrants and illegal discharge from work; for exemption of goods and chattels from distraint, invalidation of illegally applied disciplinary penalties, etc.

Control by the people. The working people take part in control in a great variety of forms. Trade unions and other mass organisations, including the Young Communist League, and the press are also directly engaged in controlling various spheres of government. As has been said, production conferences are an important factor in this activity.

Another important form of control is meetings of leading industrial and office workers and executives. They are a form of control by the people with subordinates checking up on their executives.

Control by the people of labour protection and safety engineering in industry is organised by factory committees, which invite workers and technicians to act as volunteer inspectors. They are empowered at all times to inspect shops, departments or divisions, to demand of management the explanations they require, to supervise observance of labour protection and safety rules, give management instructions on the removal of shortcomings, and control their execution.

Yet another form of public control is mutual check-ups of fulfilment of emulation agreements by enterprises, teams, shops, collective farms, etc. They involve thousands of industrial workers, collective farmers, workers of repair and service stations and state farms, and agricultural specialists.

The people also take part in financial control. Control posts are set up under factory and office trade-union committees. They are manned by public inspectors appointed by local Soviets and trade unions, and check financial operations, take part in audits by financial control bodies and supervise fulfilment of instructions given by the

auditors. They notify the bodies concerned of the financial violations they discover.

Control by the people in trade is also diversified. Volunteer controllers take turns on duty at shops for on-the-spot examination of customers' complaints and inspection of sales, weights and measures, their safe-keeping and use.

Public influence is exerted by general meetings of factory and office workers against persons engaged in public catering who ignore the needs of the working people. When necessary, they recommend to the managers of trading establishments and Executive Committees of local Soviets that such workers be removed from their posts and penalised.

It is the duty of heads of local government, economic, and commercial organisations to make timely examination of the proposals of mass control bodies and to take the necessary measures, otherwise they are called to strict account by the Councils of Ministers of the Union and Autonomous Republics, Executive Committees of territorial, regional, city, and district Soviets of Working People's Deputies, Ministries of Trade, supply offices of Ministries and Departments, the Central Co-operative Union or their local bodies.

State and departmental arbitration is designed to reinforce socialist legality and observance of plans and contracts, which are based on it.

State arbitration operates under the Council of Ministers of the U.S.S.R., the Councils of Ministers of the Union and Autonomous Republics, Economic Councils, the Executive Committees of territorial and regional Soviets and the Executive Committees of the Soviets of Autonomous Regions.

A decree of the Presidium of the Supreme Soviet of the U.S.S.R. of July 27, 1959 transferred to the jurisdiction of state arbitration bodies all disputes between state, co-operative (except collective farms) and mass organisations, enterprises and establishments formerly cognisable by the courts.

The main task of state arbitration is to stimulate establishments, enterprises and organisations to greater efficiency, promote fulfilment of economic plans and more effective operation on a self-supporting basis. This is done by protecting their rights and legitimate interests and firmly applying financial penalties for non-fulfilment of plans and contractual obligations, especially for non-delivery of goods to other economic administration areas or to Union Republics, or for national needs; by intensifying the struggle against violations of laws governing the quality and complete assembly of goods; studying and summing up the records of cases examined and submitting recommendations to Economic Councils, Ministries and other organs, as well as mass organisations, on the removal of shortcomings in the work of establishments, enterprises and organisations. In such cases, it is the duty of management to take the necessary measures, duly informing state arbitration bodies.

State arbitration bodies declare invalid, in whole or in part, contracts contradicting the laws, decisions of the Government, state plans and assignments, and bind the parties to make the necessary changes.

When state arbitration bodies discover non-fulfilment of plans and assignments for delivery of goods to other economic administration areas, Union Republics or for national needs without good reason, they inform the organs concerned, which impose disciplinary penalties or fines on the guilty persons. In cases of repeated non-fulfilment of such deliveries or delivery of goods of bad quality or incomplete assembly of goods without good reason, they transmit the records to the Procurator's Office to decide on the question of instituting criminal proceedings against the offenders.

The State Arbitration Board under the Council of Ministers of the U.S.S.R. clarifies application of the ordinance on deliveries and the special terms governing delivery of certain items, and has the right to suspend execution of

decisions adopted by republican arbitration bodies which contradict all-Union interests or violate the legitimate interests of other Union Republics, and to raise the question of their revision in the established manner.

To ensure uniformity, the State Arbitration Board under the Council of Ministers of the U.S.S.R. sums up the experience of arbitration bodies and issues instructions to them on the application of ordinances on goods deliveries and other all-Union normative acts regulating economic relations, and also on the statistical recording of cases submitted for arbitration.

The organs of the Procurator's Office have the right to lodge protests against illegal decisions of state arbitration bodies with the Chief Arbitrator under the Council of Ministers of the U.S.S.R., or the appropriate Council of Ministers or Executive Committee.

Disputes arising between establishments, enterprises and organisations within a department are examined by the corresponding departmental arbitration body.

Departmental arbitration is an auxiliary apparatus of Ministries or Departments, government committees, and Economic Councils. The ordinance on the departmental arbitration body is adopted by the head of the Department, under whom the body operates.

Complaints against illegal acts of agencies and persons in office, which the appropriate organs must examine and act upon, are highly important in ensuring legality in Soviet state administration.

In the Soviet Union there is no restriction on the range of acts which can be appealed against, nor the circle of persons in office or agencies, against whose acts complaints can be filed, nor yet the circle of persons entitled to file complaints. This right belongs not only to those whose legitimate interests and rights are invaded but also to third persons. Establishments, enterprises and organisations have the right of complaint on similar grounds.

Hence, the right of appeal in the Soviet state has the

following specific feature: it is a means of safeguarding the legitimate rights of citizens when these are violated, and a means of improving the efficiency of the Soviet state apparatus. It springs from the nature of the socialist state, in which the personal interests of citizens harmonise with the interests of the state.

It is the duty of state organs to study and summarise incoming complaints with the object of improving the operation of the state apparatus. This additionally verifies execution of the laws, decrees of the Presidium of the Supreme Soviet, decisions of the Government and other state administrative acts.

Special complaint bodies operate in Ministries and other major establishments. Otherwise complaints are examined by the head of the establishment. At the Ministries complaints are examined by special groups or boards, and at the Executive Committees of the Soviets, departments or administrations by the reception offices of their chairmen or heads.

In all cases responsibility for organising the reception and timely examination of complaints rests with the head of the establishment concerned.

Definite hours are set aside by executives for the reception of visitors in all establishments, where a register is kept of incoming complaints and applications and their movement, because it is the duty of superior organs handling complaints not only to resolve them but also to check up on the state of this work in subordinate organs, to study and classify complaints with the object of bringing to light shortcomings and taking steps to remove them.

The establishment receiving a complaint or application must in any event inform the person concerned of the result of his complaint or application. In order to eliminate red tape in handling complaints and applications and to ensure their correct resolution, they are sent to organs having jurisdiction of the matter under complaint, but not to those against whose actions the complaint is lodged.

Loss of complaints by persons in office entails disciplinary or criminal responsibility.

Definite time limits are set for the examination of complaints: one month for republican, territorial and regional organs; 20 days for district and city organs, and 15 days for servicemen's complaints filed with the former, and seven days with the latter.

The person filing a complaint is safeguarded against any reprisals, provided his complaint is not slanderous. As a rule, lapse of time is no bar to the filing of a complaint.

A complaint case is regarded as closed when the measures flowing from the decision of the organ handling the complaint are realised.

4. ECONOMIC ADMINISTRATION

The main task of the Soviet state has always been to organise, develop and consolidate socialist economy. As a consequence, most of its state administrative acts are economic.

Outlays for the development of the national economy illustrate the growing role and significance of the economic and organisational activity of the Soviet state.

	First Five-Year Plan (1928-32)	Second Five-Year Plan (1933-37)	Third Five-Year Plan and War Years (1938-45)	Fourth Five-Year Plan (1946-50)	Fifth Five-Year Plan (1951-55)
Expenditure on production fa- cilities in the national econ- omy (thou- sand mil- lion rubles)	6.79	15.74	31.36	36.99	72.11

Under the Seven-Year Plan for 1959-65 appropriations for the national economy go up to 197,000 million rubles, or almost the sum invested since the October Revolution.

Jurisdiction in economic administration. Economic administration is entrusted to organs of the Union, and also to Republican and local organs of state power and state administration.

The Soviet Constitution extends to the jurisdiction of the Union, as represented by its higher organs of state power and state administration, the administration of the banks, industrial and agricultural establishments and enterprises, trading enterprises, transport and communications of all-Union importance; determination of the economic plans of the U.S.S.R. and organisation of a uniform system of economic accounting; general guidance of industry and construction under Union-Republican jurisdiction.

In approving the economic plans and state budgets, the Supreme Soviet of the U.S.S.R. and the Supreme Soviets of the Union and Autonomous Republics determine the direction of economic activities.

The Council of Ministers of the U.S.S.R., as the highest executive and administrative organ of state power, co-ordinates and directs the activities of the all-Union and Union-Republican economic Ministries of the U.S.S.R. (i.e., a great number of the Ministries of the U.S.S.R., the Union and Autonomous Republics) and other establishments under its jurisdiction; exercises guidance of the Economic Councils of the economic administration areas through the Councils of Ministers of the Union Republics; adopts measures to carry out the national economic plan; sets up under it, whenever necessary, special organs (committees, administrations, etc.) for economic affairs.

The Councils of Ministers of the Union and Autonomous Republics exercise similar powers in respect of their own economy. With the decentralisation of economic management many branches of the national economy (the light and textile industry, food industry, local industry and local fuel

industry, communal facilities, civil engineering, highway facilities, coal industry, non-ferrous and ferrous metallurgy, construction, etc.) now fall within the prior jurisdiction of the Union Republics and, consequently, of their Councils of Ministers, which exercise day-by-day management, of Economic Councils either directly or through Republican Economic Councils.

Local economic affairs are within the jurisdiction of local organs of state power and state administration which manage them on instructions from superior state organs. They approve plans for construction on their territories, taking account of local features, and ensure their fulfilment. Local organs of state power and their administrative agencies promote the fulfilment of economic plans by organisations and enterprises of superior subordination, extending to them all the assistance they require.

Organs of economic administration such as Ministries, Departments and Economic Councils of the economic administration areas either direct or manage the economic establishments and enterprises under their authority. In accordance with the general classification of organs of state administration they are either all-Union, Union-Republican, Republican or local.

Subordination of organs of economic administration in the Union and Autonomous Republics, territories, regions, districts and towns depends on the branch of economy and the management involved. There are economic bodies (enterprises, organisations, establishments) of all-Union, Union-Republican, Republican and local subordination. Local organs of Ministries directing the economic activities of state organs of all-Union importance are subordinated vertically. The local apparatus administering economic organs of Republican jurisdiction is organised on the principle of "dual" subordination. The organs administering economic enterprises (establishments and organisations) of local importance are subordinated to the local Soviets and their Executive Committees.

The activity of organs of state administration in the national economy and their methods depend on the form of property. They administer state-owned enterprises and economic organisations, and direct, control, and supervise the economic activities of collective farms and co-operatives. The economic activity of these organisations is also determined and directed by the national economic plan, and their planned assignments are parts of the single economic plan. The rules of economic activity are also binding on co-operative societies and other mass organisations.

Types of organs of state economic administration. The national economy consists of a number of branches, including industry, agriculture and forestry, state purchases, transport, communications, trade, housing facilities and public utilities, highways, and construction. Accordingly there are organs of state administration of industry, agriculture, transport, etc. Of greater importance, however, is their classification by function.

Some organs of state administration direct or manage subordinate enterprises and economic organisations. These are Ministries, Administrations under Councils of Ministers, Economic Councils of economic administration areas, economic administrations or departments of Executive Committees of local Soviets.

Others exercise certain state functions, which extend to all Ministries and Departments. Thus, the main task of the State Planning Committee of the U.S.S.R. is to conduct a uniform centralised policy in the key branches of the national economy, to work out current and long-range plans for economic development with due account of the accomplishments of science and engineering, and control over the observance of state discipline.

The accumulation of state material and food reserves is an exceptionally important function, for they are a reliable means of overcoming difficulties of every kind and a guarantee against any emergency which may occur in Soviet economy. This is the task of the Administration of

State Material Reserves under the Council of Ministers of the U.S.S.R.

The State Committee for Inventions and Discoveries under the Council of Ministers of the U.S.S.R. stimulates inventions and ensures their application in the national economy, controls these activities and safeguards state interests in the sphere of inventions and discoveries.

The second group of organs of state administration also includes several other committees, departments and administrations under the Council of Ministers (the Administration for Re-settlement and Organised Recruitment of Workers, planning commissions, statistical agencies, etc.) and their local organs.

A third group has the function of state control and supervision of economic activities. Among them are organs of state control, financial control, architectural and construction control, supervision of safety measures in industry and mining, etc. Of special importance is the State Labour and Wages Committee of the Council of Ministers of the U.S.S.R. exercising control over the work of Ministries and Departments and over the improvement in the sphere of labour and wages.

For the exercise of their functions, the organs of state administration of the second and third groups are vested with appropriate administrative powers (the power to issue obligatory instructions on matters within their jurisdiction, the power to approve certain documents, the power to prohibit certain acts, etc.). Thus, these organs enter into relations of administrative subordination with other Ministries, Departments, establishments, institutions, enterprises and organisations.

Socialist economic methods include cost accounting and a policy of strict economy.

Cost accounting is a method used by socialist enterprises to pay their own way and make a profit in the conduct of their planned business on the basis of material incentives and material responsibility. It is of great importance

to state enterprises and economic organisations. It is directly connected with national economic planning and relations of economic organisations concluding contracts in accordance with the economic plan.

The most important task of the organs of state economic administration is to organise the operation of the enterprises and organisations under their authority with strict observance of plans, contractual obligations and regulations of cost accounting.

The policy of strict economy is designed to mobilise internal resources and use all sources of accumulation.

It is the duty of executives of enterprises and economic organisations to pursue a policy of thrift, which is ensured by the various forms of mass control.

The fund of an enterprise is an important factor in its efforts to increase socialist accumulations, reduce the costs of production to a minimum while maintaining the required quality, and to increase the share of bonuses in wages paid out to factory and office workers for fulfilment and overfulfilment of production assignments.

It is instituted at all state enterprises operating on a self-supporting basis (with independent balance sheets), fulfilling or overfulfilling the state plan for commodity output and for basic nomenclature approved by the Ministry, assignments for reducing the costs of production, and the profits plan. These include enterprises of Union, Republican and local subordination, state farms, construction organisations, public utility and transport enterprises and depots, railway transport, repair and service stations, commercial enterprises of the Ministries of Trade of the Union Republics, and enterprises of the Ministry of Communications.

The fund consists of established deductions from planned profits (or savings from reduced costs of production at enterprises without planned profits). It is used in accordance with an estimate which is co-ordinated between the director of the enterprise and the trade-union committee,

namely: 50 per cent of the fund is used to instal new machinery, modernise existing plant, expand production, and build and repair housing facilities of the enterprise over and above the planned capital investment; the rest goes to improve cultural services and amenities for the workers of the enterprise, and for individual bonuses, accommodation at holiday homes and sanatoriums, and allowances.

Disbursements by the enterprise are made only from available funds, and no sums may be expended with an eye to future receipts.

5. ADMINISTRATION OF SOCIAL AND CULTURAL AFFAIRS

Soviet state organs and mass organisations pursue the aim of educating the people in the communist spirit, of raising their cultural level and realising the fundamental rights of citizens inscribed in the Constitution. Their activity extends to science, education, culture, health services and physical culture, and social security.

Expanding social and cultural services, which play an ever greater part in the Soviet way of life, is a characteristic feature of the Soviet state. In 1958, appropriations for social and cultural needs totalled 21,280 million rubles, or 33 per cent of the budget.

The following are the key principles underlying social and cultural development in the U.S.S.R.:

- 1) the leading and guiding role of the Communist Party and the broad participation of trade unions, the Young Communist League and other mass organisations;
- 2) state sponsorship of all measures;
- 3) extensive development of the culture of all the peoples, which is national in form and socialist in content;
- 4) equal rights of Soviet citizens to education, material security in old age and in case of disablement, regardless of race, nationality or sex.

In its programme, adopted as far back as 1919, the Communist Party set forth the following tasks in social and

cultural affairs: free and compulsory universal education; polytechnical education at schools free from any religious instruction whatsoever; establishment of a system of pre-school institutions (nurseries, kindergartens, etc.) with the object of improving public education and freeing women from household chores; co-education of children of both sexes; enlistment of the working people in educational and cultural affairs; all-round state aid in the self-education of the working people; material security for working people in need; placing all state treasure-houses within reach of working people; free medical aid; extensive health-giving and sanitary measures to prevent disease; and broad state assistance to persons temporarily or permanently incapacitated for work.

Since then the Communist Party and its leading bodies have been working to implement this programme. The decisions of Party congresses and guiding Party organs served as a basis for legal acts by the state, and acts by mass organisations.

Following the decisions of the Twentieth Party Congress, the U.S.S.R. Supreme Soviet adopted the law of July 14, 1956, which radically improved the pension system.

Social and cultural measures are carried out by Soviet state organs and mass organisations. The absolute majority of social and cultural establishments are operated and financed by the socialist state.

To make sure that all nations and nationalities develop their culture, Soviet state organs and mass organisations set up national theatres and other social and cultural establishments and take steps to create national literatures and arts. They ensure the training of personnel of all nationalities as teachers, researchers, medical workers, etc.

Jurisdiction of state organs in social and cultural affairs. The Constitution of the U.S.S.R. refers to the jurisdiction of the higher organs of state power and state administration establishment of fundamentals of public education and health services; planning of social and cultural affairs

on the all-Union scale, and the necessary state appropriations; and administration of social and cultural institutions of all-Union subordination.

Scientific research institutions are united in the Academy of Sciences of the U.S.S.R. and the Academies of the Union Republics, or operate within the corresponding Ministries, Departments and Economic Councils.

The Academy of Sciences of the U.S.S.R., which functions on the basis of a charter approved by its general meeting, is under the direct authority of the Council of Ministers of the U.S.S.R. and is thereby an all-Union state establishment, of which the country's leading scientists are members.

In co-ordination with scientific institutions of other countries, the Academy takes part in setting up international scientific bodies.

The Academy's supreme organ is the general meeting, which elects the Presidium.

The Academy's scientific research is organised on the basis of research institutes which are headed by directors.

The directors of institutes, operating under the Presidium, are elected by the Presidium and approved by the general meeting.

The role of science and engineering is even greater now that the Soviet Union has entered the period of full-scale construction of communist society. The direction of scientific institutions and co-ordination of research planning must be improved. With that end in view and also to interpret the accomplishments of science and engineering for the national economy and eliminate duplication in research, the C.P.S.U. Central Committee and the Council of Ministers of the U.S.S.R., in their decision of April 12, 1961 "On Measures to Improve the Co-ordination of Research and the Work of the Academy of Sciences of the U.S.S.R.", recognised the need to set up a "State Committee of the Council of Ministers of the U.S.S.R. for Research Co-ordination". It is to direct the work of research institutions in solving the

most important complex problems in science and technology in accordance with the directives of the Communist Party and the Soviet Government, and to co-ordinate the work of the Academy of Sciences of the U.S.S.R., the Academies of Sciences of the Union Republics, Ministries and Departments of the U.S.S.R.; it is also to ensure continuity of research until the results are applied in the national economy.

In connection with the measures to remodel the direction of research institutions and the establishment of the Research Co-ordination Committee, and in order to improve the work of the Academy of Sciences of the U.S.S.R., the C.P.S.U. Central Committee and the Council of Ministers of the U.S.S.R. recognised the need to concentrate the efforts of the Academy of Sciences in the most promising and most rapidly developing fields of science, which help to boost the national economy and culture.

At the proposal of the Presidium of the Academy of Sciences and in order to concentrate the efforts of the Academy of Sciences of the U.S.S.R. on key research in the natural sciences and the humanities, and also to improve the work of branch institutes, a number of institutes and other scientific establishments as well as branches of the Academy of Sciences of the U.S.S.R. are transferred to State Committees of the Council of Ministers of the U.S.S.R., Ministries, Departments and the Council of Ministers of the R.S.F.S.R. The Academy of Sciences of the U.S.S.R. continues the scientific and methodological direction of its branches.

The jurisdiction of the Union Republics extends to the administration of public health; social security; primary, secondary, occupational and technical, higher and secondary special education; cultural, and other social institutions of Republican subordination; control and supervision of the administration of social and cultural establishments of Union subordination.

Research institutes which are not within the framework

of the Academy of Sciences of the U.S.S.R. or the Academies of the Union Republics are directed by the appropriate Ministries, Departments and Economic Councils.

There are Republican Academies of Sciences in all Union Republics, with the exception of the R.S.F.S.R.

There are also several specialised Academies, including the Lenin Academy of Agricultural Sciences; Academy of Arts of the U.S.S.R.; Academy of Medical Sciences of the U.S.S.R.; Academy of Pedagogical Sciences of the R.S.F.S.R.; Academy of Communal Services of the R.S.F.S.R.; Academies of Building and Architecture of the U.S.S.R. and of the Ukrainian Republic; Academies of Agricultural Sciences in the Ukraine, Byelorussia, and Uzbekistan.

The system of organs of state administration is patterned after the division of jurisdiction between the U.S.S.R. and the Union Republics in social and cultural affairs. The Ministry of Higher and Secondary Special Education of the U.S.S.R., the Ministry of Public Health of the U.S.S.R., and the Ministry of Culture of the U.S.S.R. are Union-Republican Ministries. The branches of social and cultural services, education and social security are administered by Republican Ministries of the same name in the Union Republics. The State Committee of the Council of Ministers of the U.S.S.R. on Occupational and Technical Training directs the training of skilled workers through a network of specialised professional schools.

Apart from the above-mentioned organs of state administration, the Council of Ministers of the U.S.S.R. has the following organs for social and cultural affairs: the State Committee on Radio and Television; the Committee on Lenin Prizes in Literature and Art; the Committee on Lenin Prizes in Science and Invention; the Commission for Pensions of All-Union Importance.

The Union-Republican Ministries of the U.S.S.R. exercising direction of social and cultural affairs have the following duties.

The Ministry of Higher and Secondary Special Education of the U.S.S.R. works out the main targets for long-range planning of higher and secondary special education; gives its conclusions on the proposals of the Councils of Ministers of the Union Republics concerning the distribution of institutions of higher learning in the Republics and economic areas; assists the Republics in organising research in higher schools and co-ordinates plans for research, publication of textbooks and study aids for colleges and technical schools; extends assistance to the Republics in developing scientific methods; approves, in co-ordination with them, curricula, regulations of industrial training, and rules for admission to higher and secondary specialised schools; extends assistance in organising the teaching of the social sciences in these schools.

The Ministry has sole jurisdiction in working out regulations and instructions on the training of scientists and teachers, and their certification; in preparing methodological material for the training of students; and in establishing international ties on matters of higher and secondary special education.

The Ministry of Culture of the U.S.S.R. has jurisdiction of the cinema industry, the stage, music, and the fine arts; protection of monuments; circuses; cultural establishments; publishing houses, and the book trade. The All-Union Circus Association and the Academy of Arts of the U.S.S.R. are under the direct authority of the Ministry. It exercises general guidance of the Ministries of Culture of the Union Republics, verifies and analyses their reports.

The extension of the powers of the Union Republics and local organs of power has been most marked in social and cultural affairs. Thousands of enterprises were transferred from Union to Republican authority, and from Republican authority many were handed over to territorial, regional and city administration.

The Ministry of Public Health of the U.S.S.R. exercises direction of health services through Ministries of the same

name in the Union Republics, whose work it guides and verifies. The Ministry of Public Health directs the work of the Academy of Medical Sciences.

The extension of the powers of the Union Republics and the local organs of power in the sphere of public health consisted in the transfer of many medical and sanitary institutions, research institutes, schools and other organisations from Union authority to the Republican Ministries.

The State Committee of the Council of Ministers of the U.S.S.R. on Occupational and Technical Training gives methodological assistance to the Union Republics in organising and improving teaching in professional and technical schools and in training skilled workers on the shop floor; with the participation of the Union Republics it compiles curricula, study aids and instructions; helps the Union Republics to publish textbooks, study and visual aids for all types of professional and technical schools; approves, in co-ordination with the Councils of Ministers of the Union Republics, lists of professions in which skilled workers are trained; studies, summarises, and disseminates Soviet and foreign experience in professional and technical education, and maintains ties with foreign countries.

Jurisdiction of Ministries of the Union Republics. The Ministries of the Union Republics which have charge of social and cultural affairs are either Union-Republican or Republican. Among the former are the Ministry of Higher and Secondary Special Education, the Ministry of Culture, and the Ministry of Public Health.

These Ministries direct all cultural affairs and health services in the Union Republics. With the object of developing and improving the system of higher and secondary special education, strengthening the ties between higher and secondary specialised schools and production, and improving the training of students, as well as extending the rights of the Union Republics in the administration of these affairs, higher and secondary specialised schools

have been placed under the authority of the Councils of Ministers of the Union Republics. They decide the organisational forms of administration of higher and secondary specialised schools. Some Union Republics have set up Ministries of Higher and Secondary Special Education and state committees of the same name under the Councils of Ministers of the Union Republics; others have placed these matters within the competence of Republican Ministries of Education. All these bodies approve plans for enrolment in institutions of higher learning, and distribution of jobs among their graduates; study needs in personnel; organise the study of teaching methods, and educational and research work; handle material and technical supplies, and the financing and construction of schools under their authority.

Union-Republican Ministries of the Union Republics are subordinate in their activities both to the Council of Ministers of the Union Republic and to the corresponding Union-Republican Ministry of the U.S.S.R.

Schools and also Republican, territorial, regional, and city labour reserves administrations and other organisations previously within the system of the Central Labour Reserves Department under the Council of Ministers of the U.S.S.R., were transferred to the jurisdiction of the Union Republics.

The following matters are placed within the competence of the Union Republics: approval of plans for training skilled workers in occupational and technical schools and on the shop floor; working out long-range and annual plans for distributing jobs among young people; ensuring enrolment at occupational and technical schools; control of employment of young workers; training of skilled workers in accordance with the economic plan; establishment of new schools, etc.

The ordinances on the organs of state administration in occupational and technical education are approved by the Councils of Ministers of the Union Republics. In some Uni-

on Republics, as in the R.S.F.S.R., there is a Department under the Council of Ministers for Occupational and Technical Education; in the Byelorussian Republic this is handled by the Ministry of Higher, Secondary Special and Professional Education.

The Ministry of Education and the Ministry of Social Security are Republican Ministries. They direct the branches of state administration assigned to them and are directly subordinate to the Council of Ministers of the Union Republic.

These Ministries direct and verify the work of Ministries of the same name of the Autonomous Republics and the corresponding organs of state administration of territorial, regional, city, and district Soviets.

In the Union Republics there are Committees on Radio and Television, which are subordinate to the State Committee on Radio and Television under the Council of Ministers of the U.S.S.R. and to the Council of Ministers of the Union Republic.

Radio and television offices or radio offices are set up in the territories and regions.

Jurisdiction of Ministries of the Autonomous Republics. These administer social and cultural affairs under the authority of the Autonomous Republic; they are subordinate both to the Council of Ministers of the Autonomous Republic and to the corresponding Ministers of the Union Republic.

Among the Ministries in charge of social and cultural affairs in the Autonomous Republics are the Ministry of Culture, the Ministry of Public Health, the Ministry of Education, and the Ministry of Social Security.

Jurisdiction of local organs of state power and state administration. Local Soviets of Working People's Deputies direct cultural affairs on their territory, and direct subordinate administrative organs.

The *Executive Committees* of the Soviets of Working People's Deputies direct cultural affairs on their territory

on the basis of decisions of the corresponding Soviets and superior state organs.

Organs of state administration (boards or departments of culture, health services, public education, social security) are set up under the Soviets of Working People's Deputies, with the exception of rural Soviets, to manage social and cultural affairs and direct cultural establishments under the local Soviets.

Jurisdiction of organs of state administration in respect of social and cultural establishments subordinate to mass organisations. This consists of direction and guidance of their activities and state control over their work. Thus, pre-school institutions and cultural and educational institutions for adults, financed by mass organisations (trade unions, etc.), operate under the guidance of the organs of public education and are subordinate to them in respect of organisation and methods. The Ministry of Culture exercises state control over the work of libraries, museums and the clubs of all establishments; theatres, music and fine arts establishments, the screening of films by all organisations; repertoires and activities of all cultural societies and other organisations. Health organs direct medical and sanitary affairs, and exercise control over the construction of medical and sanitary establishments of other departments and organisations and over the observance of sanitation rules and standards, etc. In social security, organs of state administration exercise general direction of mutual aid funds at collective farms and mutual aid funds of pensioners, and direct the work of various co-operative societies.

Sports activities are co-ordinated and guided by the Union of Sports Societies and Organisations of the U.S.S.R. Its Central Council is elected by an all-Union conference for a term of four years. It is represented by locally elected councils in the Republics, territories, regions, cities, and districts. The councils include representatives of sports societies of the Soviet Army, Ministries

and Departments, the Society for the Promotion of the Army, Aviation and Navy, athletes and coaches. Representatives of trade-union and Young Communist League organisations are elected deputy-chairmen of the councils.

6. ADMINISTRATION OF DEFENCE, STATE SECURITY, LAW AND ORDER, AND EXTERNAL RELATIONS

Administration of defence. The organisation of the Armed Forces of the U.S.S.R. is based on the principles of the regular army and universal military service.

Military service comprises active service and service in the reserve. Persons on active service are known as members of the Armed Forces; persons in the reserve, as reservists.

Servicemen take the oath of allegiance to their people, to the Soviet Motherland and the Government of the U.S.S.R.

The regular army is based on the principles of strict centralisation and unity of leadership of the Armed Forces. Unity of leadership rests on strict one-man command and military discipline. Military discipline is each serviceman's awareness of his military duty and personal responsibility for the defence of his native country, the Union of Soviet Socialist Republics.

Administration of defence is carried out by the Union-Republican Ministry of Defence of the U.S.S.R. under the direction of the supreme organs of state power and the Government.

The Constitution of the U.S.S.R. assigns certain special functions in military administration to the Presidium of the Supreme Soviet and the Council of Ministers of the U.S.S.R., as well as to the local Soviets of Working People's Deputies and their Executive Committees.

The Presidium of the Supreme Soviet of the U.S.S.R. appoints and removes the high command of the Armed

Forces of the U.S.S.R.; confers the highest military titles, those of Generalissimo of the Soviet Union, Marshal of the Soviet Union and marshals of the various arms; in the intervals between sessions of the Supreme Soviet of the U.S.S.R. proclaims a state of war in the event of military attack on the U.S.S.R., or when necessary to fulfil international treaty obligations concerning mutual defence against aggression; orders general or partial mobilisation and demobilisation.

The Council of Ministers of the U.S.S.R. directs the work of the Ministry of Defence of the U.S.S.R. and committees connected with national defence; fixes the annual contingent of citizens to be called up for military service; directs the general organisation and building of the country's Armed Forces; confers the titles of general and admiral.

Local Soviets and their Executive Committees, on the basis of Article 79 of the Constitution of the R.S.F.S.R. and the corresponding articles of the Constitutions of the other Union Republics, promote the U.S.S.R.'s defence capacity. They play a great part in implementing the laws on benefits, allowances and pensions to servicemen and their families, and on their living conditions.

Administration of state security, law and order. The Constitution of the U.S.S.R. places the safeguarding of state security within the jurisdiction of the Union of Soviet Socialist Republics as represented by its higher organs of state power and state administration (C USSR 14 i).

Legislative power in the U.S.S.R. in the sphere of state security is within the sole jurisdiction of the Supreme Soviet of the U.S.S.R. The Presidium of the Supreme Soviet of the U.S.S.R. is vested with the power to proclaim martial law in separate localities or throughout the U.S.S.R. in the interests of the defence of the U.S.S.R. or of the maintenance of law and order and the security of the state (C USSR 49 r).

The Council of Ministers of the U.S.S.R. adopts measures ensuring the maintenance of law and order, protection of the interests of the state, and the rights of citizens.

The maintenance of law and order and protection of the rights of citizens are within the competence of the higher organs of power and state administration of the Union Republics. For example, the Constitution of the R.S.F.S.R. says that the maintenance of law and order is within the jurisdiction of the R.S.F.S.R. as represented by its higher organs of state power and state administration. There are similar articles in the Constitutions of the other Union Republics.

The Council of Ministers of a Union Republic adopts measures for the maintenance of law and order, protection of the interests of the state and the rights of citizens. The rights and duties of the higher organs of power and state administration of the Autonomous Republics are similar. Local organs of state power ensure the maintenance of law and order, observance of the laws and the safeguarding of the rights of citizens (C USSR 97).

The safeguarding of state security is entrusted to the State Security Committee under the Council of Ministers of the U.S.S.R. and the State Security Committees under the Councils of Ministers of the Union and Autonomous Republics and their local organs.

It is the task of the State Security Committee to adopt the necessary measures to ensure state security by discovering spies, saboteurs, terrorists and other agents of foreign intelligence services smuggled into the U.S.S.R., and measures to institute criminal proceedings against them; to discover crimes against the state and to carry out preliminary investigation.

The State Security Committee under the U.S.S.R. Council of Ministers is headed by a Chairman who is a member of the Council of Ministers of the U.S.S.R. (C USSR 70). The Chairmen of State Security Committees of the Union and Autonomous Republics are members of their

Councils of Ministers (Arts. 47 and 69, Constitution of the R.S.F.S.R., and corresponding articles of the Constitutions of the other Union Republics).

Depending on the conditions in the territories and regions, and on the basis of the laws of the U.S.S.R. and the Union Republics, the State Security Committees under the Councils of Ministers of the Union Republics set up boards under territorial or regional Soviets of Working People's Deputies.

The militia is a vital factor in the maintenance of law and order. The Ministries of Internal Affairs of the Union Republics have Republican Militia Administrations. There are no special militia organs in the Ministries of Internal Affairs of the Autonomous Republics or in the territorial and regional administrations of the Ministries of the Union Republics.

In the Autonomous Republics, the Ministers of Internal Affairs are simultaneously chiefs of militia of the Republic, and direct all the local organs of the militia. They are subordinate to the Council of Ministers of the Autonomous Republic as well as to the Minister of Internal Affairs of the corresponding Union Republic. The chiefs of territorial and regional administrations of internal affairs and administrations of Autonomous Regions are also the chiefs of militia of the territory, region, or autonomous region, and direct all the organs of the militia in their area. They are subordinate to the corresponding Soviets and their Executive Committees, and to the chief of the Militia Administration of the Ministry of Internal Affairs of the Union Republic.

Militia administrations, departments and stations are set up in the areas, cities, districts, and workers' settlements by the local Soviets. These militia organs of the Executive Committees of the Soviets are subordinate in their activities to the Soviet and its Executive Committee and also to the corresponding administration of internal affairs.

The chiefs of militia of the areas, cities, districts and workers' settlements are appointed by the local Soviets at sessions convened to form administrative organs, and in the intervals between sessions by the Executive Committees of the Soviets with subsequent approval by the following session.

Administration of foreign affairs. The jurisdiction of the Union of Soviet Socialist Republics, as represented by its higher organs of state power and state administration, extends to representation of the U.S.S.R. in international relations, conclusion, ratification and denunciation of treaties of the U.S.S.R. with other states; establishment of general procedure governing the relations of the Union Republics with foreign states. The Council of Ministers of the U.S.S.R. exercises general guidance in the sphere of relations with foreign states (C USSR 68 d). It is empowered to conclude treaties in its own name, in which case they do not require ratification.

The Council of Ministers of the U.S.S.R. issues decisions appointing and recalling the heads of representations and missions of the U.S.S.R., with powers below those of ambassadors and ministers, in the various international commissions operating on the basis of treaties concluded by the U.S.S.R.; the heads and members of delegations appointed for talks on international treaties not requiring ratification. Their letters of credence are signed by the head of the Soviet Government and countersigned by the Minister of Foreign Affairs of the U.S.S.R.

The jurisdiction of the Supreme Soviets of a Union Republic extends to establishment of representation of that Republic in its international relations (C USSR 60 e).

The Union Republics enter into direct relations with foreign countries by exchanging diplomatic and consular representatives.

Diplomatic representatives of the U.S.S.R. in foreign countries are appointed and recalled by the Presidium of the Supreme Soviet of the U.S.S.R., which also receives

letters of credence and recall of diplomatic representatives accredited to it by foreign states.

Letters of credence and recall issued to diplomatic representatives of the U.S.S.R. in foreign countries are signed by the President and the Secretary of the Presidium of the Supreme Soviet of the U.S.S.R.

The Presidiums of the Supreme Soviets of the Union Republics appoint and recall diplomatic representatives of these Republics in foreign countries; they receive letters of credence and recall of diplomatic representatives accredited to them by foreign powers (e.g., Art. 30 j and k, Constitution of the Ukrainian Republic; Art. 31 i and j, Constitution of the Byelorussian Republic; Art. 30 h and i, Constitution of the Uzbek Republic, etc.). The Councils of Ministers of the Union Republics exercise direction in relations of the Union Republics with foreign countries on the strength of the general procedure adopted by the U.S.S.R. in the relations of the Union Republics with foreign states (e.g., Art. 43 h, Constitution of the Ukrainian Republic; Art. 43 g, Constitution of the Byelorussian Republic; Art. 46 g, Constitution of the Uzbek Republic, etc.).

Administration of foreign affairs is entrusted to the Ministry of Foreign Affairs of the U.S.S.R. and the Ministries of Foreign Affairs of the Union Republics. The Ministry of Foreign Affairs of the U.S.S.R. is a Union-Republican Ministry. Its main tasks are: safeguarding the external political and economic interests of the Union and citizens of the U.S.S.R. abroad; fulfilling decisions of the Government of the U.S.S.R. on the conclusion of treaties and agreements with foreign countries and directing their implementation; supervising the fulfilment of treaties and agreements by the appropriate establishments of the U.S.S.R. and the Union Republics and assisting them in the exercise of their rights established by these treaties and agreements.

• The Minister of Foreign Affairs has special powers. He

exercises international representation; appoints certain diplomatic representatives (consuls, chargé d'affaires, counsellors, secretaries and attachés); makes public treaties, agreements, and conventions of the U.S.S.R. with foreign countries; authenticates letters of credence and recall, and consular patents, mandates and other documents of the agents of various administrations of the U.S.S.R. abroad, receives arriving diplomatic representatives in connection with the forthcoming presentation of their letters of credence. The Ministry of Foreign Affairs has a number of operational departments, organised on the territorial principle, which maintain relations with various countries, and a protocol department handling reception of foreign diplomats.

For external relations with foreign countries the Union Republics have Union-Republican Ministries of Foreign Affairs. Their work is based on the general procedure established by the Union for relations of the Union Republics with foreign states and is directed by instructions of the higher organs of state power and state administration of the U.S.S.R. and the Union Republics, as well as the Ministry of Foreign Affairs of the U.S.S.R.

Diplomatic and consular representatives are the organs of the Ministry of Foreign Affairs abroad.

A diplomatic agent of the U.S.S.R. is the sole representative of the Union in the country of stay and is directly subordinate to the Minister of Foreign Affairs of the U.S.S.R. In the country of stay he exercises general supervision of the activities of all state institutions, enterprises and persons in office of the U.S.S.R. and Union Republics. These are duty bound to inform their diplomatic agent of their major undertakings.

Consuls of the U.S.S.R. are appointed to some cities in foreign countries. They are appointed, transferred and recalled from their posts by the Ministry of Foreign Affairs of the U.S.S.R. It is their duty to safeguard and protect the economic and legal interests of the U.S.S.R. and its

constituent Republics, and of juridical persons and citizens of the U.S.S.R.

The rights and duties of consuls are defined in the Consular Ordinance of the U.S.S.R., laws and decisions of the Government of the U.S.S.R. and the Governments of the Union Republics, and in some cases by treaties and agreements with foreign states and international practices. Consuls (consuls-general, consuls, vice-consuls) and consular agents take out consular patents from the Ministry of Foreign Affairs of the U.S.S.R. and report to it on their activities. In the country to which they are assigned, consuls are directed by and subject to the supervision of the diplomatic agent of the U.S.S.R. who, in exceptional cases, may suspend a consul, simultaneously reporting the matter to the Minister of Foreign Affairs of the U.S.S.R.

Diplomatic representatives and members of diplomatic representations of foreign states are granted rights and privileges and diplomatic immunity in accordance with the rules of international law and on a basis of reciprocity. This is manifest in particular in a diplomat's immunity, i.e., in greater protection of life, freedom and honour; inaccessibility of his home to the state organs to which he is accredited; exemption from the jurisdiction of the receiving state and subordination to the legal rules and jurisdiction of the state he represents; exemption from direct taxes and duties paid in kind by the citizens of the receiving state; unimpeded communication with the state represented by the diplomat.

The said rights extend to diplomatic agents of the U.S.S.R. in foreign countries, the officers of diplomatic representations and members of their families. Foreign diplomats in the U.S.S.R. enjoy similar rights on a basis of reciprocity.

Consuls have considerably fewer rights than diplomatic agents. A consul may be personally detained as a preventive measure or under a court decision; he is subject to local civil jurisdiction in all matters not connected with

the performance of his duties, etc. Consuls have inviolability of official correspondence which is not subject to inspection, seizure or sequestration.

Administration of foreign trade. Monopoly of foreign trade is a specific socialist form of economic intercourse of the U.S.S.R. with other states, under which the state concentrates all foreign trade in its hands through a special organ, namely, the Ministry of Foreign Trade.

It is Soviet policy to develop foreign trade with all countries desiring to do so.

The Constitution of the U.S.S.R. entrusts the Presidium of the Supreme Soviet of the U.S.S.R. with ratification of international treaties, thereby referring to its jurisdiction also the approval of trade treaties with foreign states which are subject to ratification.

The Government of the U.S.S.R. exercises general direction of foreign trade, approves export and import plans, and trade treaties with foreign states, appoints and recalls Soviet trade agents and organises export and import associations.

It is the duty of the Ministry of Foreign Trade of the U.S.S.R. to work out and implement general measures designed to develop trade relations with foreign states, to draw up export and import plans of the U.S.S.R., to implement them and direct foreign trade operations; to work out customs policy and run the customs of the U.S.S.R.; supervise the execution of all laws and regulations governing the monopoly of foreign trade.

The Ministry of Foreign Trade of the U.S.S.R. handles all foreign trade operations ranging from delivery of goods for export to settlement of accounts on transactions concluded. All export and import operations are performed under the direction and control of the Ministry. It also performs all auxiliary operations, the chief being the outward and inward freightage of goods. It also supervises imports and exports and the levying of duties, i.e., it han-

dles all customs business. The Ministry operates through its apparatus at home and abroad.

Current business is handled by the Ministry's export and import associations, which operate on the principle of one-man management.

The formation of foreign trade associations falls within the competence of the Council of Ministers of the U.S.S.R. Their charters are approved by the Minister of Foreign Trade. They operate in strict accordance with the export-import plan approved by the Government. These associations are juridical persons, and their assets are liable to their obligations. Neither the Ministry of Foreign Trade nor the state is liable to the obligations of the associations, and vice versa.

The Minister of Foreign Trade is empowered to grant the Ministry's associations the right to conclude transactions with foreign firms both on the territory of the U.S.S.R. and abroad, and to issue and receive bills of exchange accordingly. Such transactions are concluded in the name of the association and within the limits of its charter.

The U.S.S.R. Ministry of Foreign Trade has its representatives with the Councils of Ministers of the Union Republics and in the territories, regions, cities and custom-houses. These representatives, whose appointment is confirmed by the Government of the U.S.S.R. in co-ordination with the Government of the Union Republic, ensure uniformity in the work of all-Union and Republican organs, required for the successful operation of the Ministry of Foreign Trade.

The representatives are charged with supervision over the activities of all organisations working in foreign trade within the Union Republics; fulfilment of plans of delivery and purchase of goods for export and their shipment; quality of goods delivered for export, and compilation and submission to the Ministry of Foreign Trade of import plans for enterprises of Republican and local importance.

The Ministry of Foreign Trade is represented abroad by trade missions and agencies. Juridically, trade missions are component parts of diplomatic representations, but in their operations are subordinate to the Ministry of Foreign Trade.

Trade missions are headed by trade representatives of the U.S.S.R. appointed and recalled by the Council of Ministers of the U.S.S.R. at the recommendation of the Ministry of Foreign Trade in co-ordination with the Ministry of Foreign Affairs. The trade representative receives his powers from the Council of Ministers of the U.S.S.R.

Transactions concluded by the trade missions are those of the Soviet state, which is liable for them. The state is liable for transactions, including those concluded by the Ministry's associations, only if the given trade mission has openly undertaken responsibility for them.

Trade missions of the U.S.S.R. are not subject to the jurisdiction of the courts of the country of stay.

The question of foreign civil jurisdiction is settled in each separate case in line with international treaties or unilateral statements of the U.S.S.R. concerning agreement to place its trade mission within the jurisdiction of a foreign court in civil suits.

With the permission of the Ministry of Foreign Trade and in co-ordination with the Ministry of Foreign Affairs, trade missions of the U.S.S.R. establish branches in certain parts of the country of stay. They are headed by trade representatives who are appointed by the Ministry of Foreign Trade and act on the strength of letters patent issued to them by the Soviet trade mission concerned.

Independent trade agencies of the U.S.S.R. are set up by the Ministry of Foreign Trade in co-ordination with the Ministry of Foreign Affairs in countries where there are no Soviet trade missions. They are subordinate directly to the Ministry of Foreign Trade and are headed by trade representatives of the U.S.S.R., who are appointed and recalled by the Ministry of Foreign Trade and act on the

strength of powers issued by the Ministry. The rights and duties of the trade missions of the U.S.S.R. extend to trade representatives within the limits of their activities.

The U.S.S.R. Chamber of Commerce operates under the general supervision of the Ministry of Foreign Trade. The main task of this association is to promote the U.S.S.R.'s economic ties with foreign countries and domestic trade.

Economic ties with foreign countries are also maintained by the *State Committee of the Council of Ministers of the U.S.S.R. for Economic Relations with Foreign Countries*. Its main tasks are to extend and strengthen economic co-operation with the socialist countries, to establish and extend economic ties with underdeveloped countries; to ensure fulfilment of the Soviet Union's obligations in economic co-operation and extension of technical assistance in the construction abroad of enterprises and other facilities provided for by inter-governmental agreements.

Administration of scientific and cultural ties with foreign countries. Together with world trade, cultural exchanges and intercourse of the nations are vastly important in easing international tensions and building up mutual confidence.

Soviet scientific and cultural ties with foreign countries have always been maintained through many Ministries and Departments with foreign relations sections or boards, such as the Ministry of Culture of the U.S.S.R., the Ministry of Public Health, the State Committee on Radio and Television under the Council of Ministers of the U.S.S.R., the Ministry of Communications, the Ministry of Railways. The Academy of Sciences of the U.S.S.R. and research institutes have direct scientific and cultural ties with foreign countries.

The State Committee of the Council of Ministers of the U.S.S.R. for Cultural Relations with Foreign Countries was set up in 1957.

Soviet mass organisations play a big part in cultural ex-

changes. Prominent among them was the U.S.S.R. Society for Cultural Relations with Foreign Countries. Foreign ties outgrew its capacities, and its methods no longer satisfied Soviet public opinion in scientific and cultural co-operation with foreign countries.

At the initiative of the Soviet public, societies of friendship and cultural relations with foreign countries were set up. Their singleness of purpose and the need to co-ordinate their activities brought about the Union of Soviet Societies for Friendship and Cultural Relations with Foreign Countries. Its Charter was adopted in February 1958, at the All-Union Conference of Soviet Friendship Societies. The Union's key task is to develop and strengthen friendship, confidence and cultural co-operation between the Soviet people and other nations. The Union acquaints the Soviet people with their history, way of life, economy, culture and languages; promotes the acquaintance of other nations with the Soviet way of life and accomplishments in state development, economy, culture, and science. It helps set up and unites organisations for friendship and cultural relations with foreign countries.

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Chapter Four

CIVIL LAW

1. CONCEPT

Soviet civil law regulates corporeal relations between private persons, between socialist organisations and private persons, and between socialist organisations in the economic turnover. It also regulates certain personal incorporeal relations (such as copyright).

In some cases corporeal relations in socialist society are regulated by the rules of other branches of law, such as financial, collective-farm, labour and administrative.

Corporeal relations connected with the accumulation and distribution of money by the state pertain to financial law; corporeal relations involving intra-collective-farm relations pertain to collective-farm law; corporeal relations connected with labour relations pertain to labour law; administrative law regulates corporeal relations in which state organs exercise their authority; when they appear only as the bearers of corporeal rights and obligations, the resultant relations are regulated by civil law.

The Constitution of the U.S.S.R., the Constitutions of the Union Republics and their civil codes are the main sources of Soviet civil law.

The Civil Code of the R.S.F.S.R., which was adopted on October 31, 1922 and took effect on January 1, 1923, was the first Soviet civil code. It was followed by civil codes in the other Union Republics. Other acts were

aimed at organising state industry, trade and transport; introducing cost accounting and planning; regulating the operation of co-operatives and protecting the personal and corporeal rights of citizens (copyright, family, etc.).

The 1936 Constitution of the U.S.S.R. laid down the basic principles of Soviet civil law.

2. CIVIL LEGAL RELATION

Concept. In regulating corporeal and certain incorporeal personal relations Soviet civil law lends them the character of civil legal relations, establishing rights and obligations for the parties. A civil legal relation contains the following elements: 1) the subjects; 2) the objects; and 3) the rights and obligations of the subjects.

1. *The subjects of civil legal relations.* There are two categories of subjects in civil law—private persons and juridical persons. The concepts of legal capacity (*pravo-sposobnost*) and legal ability (*deyesposobnost*) are highly important in defining the status of citizens as subjects of civil rights. The Civil Code of the R.S.F.S.R. defines *legal capacity* as “the capacity of having civil rights and obligations” (Art. 4). It is equally recognised for all citizens of the U.S.S.R. The principle of equal legal capacity, regardless of sex, race, nationality, creed or origin, was set forth in the early Soviet decrees and was fixed by the Civil Code of the R.S.F.S.R. and the civil codes of the other Union Republics. It was most fully and comprehensively expressed in the Constitution of the U.S.S.R. (Arts. 122 and 123). The Constitution does not merely proclaim equal legal capacity: it guarantees the citizen the exercise of his rights (Arts. 118, 119, 120 et al.). The interconnection of the rights and duties of citizens is a characteristic of legal capacity in the U.S.S.R.

The Civil Code of the R.S.F.S.R. (CC) enumerates the civil rights of Soviet citizens. In accordance with its Arti-

cle 5 every citizen has the right to move about freely and to settle within the territory of the Republic, to choose any occupation and profession not forbidden by law, to acquire and alienate property, to conclude legal transactions and to incur obligations. The final part of Article 5, which grants citizens the right to organise industrial and commercial enterprises, designed for the New Economic Policy period, is outdated, and is no longer applied. Article 5 is not exhaustive, for it does not mention such rights as bequest, succession, etc.

Legal capacity is a property established by law; therefore no one may give up his legal capacity or limit it at will (CC 10). No one may be deprived of civil rights or limited in rights except in cases and in the manner established by law (CC 6). Civil rights may be limited only by decision of a court by way of punishment for a criminal offence.

Legal capacity arises with birth and ceases with death. Under certain conditions a person missing from his domicile may be declared dead. This results in highly important consequences (discontinuance of marriage, opening of succession, etc.). Laws in the Union Republics prescribe special proceedings to declare a person missing from his domicile as dead. In the R.S.F.S.R. this is the duty of notaries public and district people's courts (CC 12). In some Union Republics only a court may declare a person dead (the Ukraine, Byelorussia, etc.).

A distinction must be drawn between legal capacity and *legal ability*, or a person's ability to acquire by his acts civil rights and to undertake civil obligations (CC 7). Every citizen of the U.S.S.R. has legal capacity but not everyone has legal ability, for the latter presumes that the person is aware of the significance of his acts aimed at acquiring rights and undertaking obligations. Full legal ability is acquired at the age of 18. The general rule is that until the age of 14 citizens are regarded as not having any legal ability at all, and as possessing partial legal

ability between the ages of 14 and 18. For minors who have not attained the age of 14, transactions are concluded by parents or guardians, as their legal agents. Persons whose duty it is to care for minors are responsible for damage inflicted by them.

Minors who have reached the age of 14 may enter into legal transactions with the consents of their parents or curators. They have the right to dispose of their earnings at their free will (wages, pay for work-day units), and are liable for damage caused by their acts, but their parents and curators are also liable as well as the minors (CC 9 and 405).

In some cases the law lowers the age at which legal ability is recognised. Thus, majority in respect of labour comes at the age of 16, when a citizen has the right to conclude a labour contract independently. With the attainment of the age of 16, citizens may become members of collective farms and consumer societies. A minor who is under 14 but who has independently made savings deposits may dispose of them without participation by his legal representative.

Persons insane or mentally deficient, and so recognised in the established order, are regarded as legally incapable.

Guardianship is instituted to protect the person, legitimate rights and interests of incompetents. It is instituted for minors below the age of 14, in the event of the death of both parents, their prolonged absence, prolonged mental disease or deprivation of parental rights by decision of the court. Guardianship is instituted also for the mentally deficient and insane. *Curatorship* is instituted for minors between the age of 14 and 18. The main distinction between a guardian and a curator is that the former fully substitutes for his ward in the acquisition of civil rights or establishment of civil obligations. The curator merely assists the person under his care in the exercise of his rights and the performance of his obligations, gives or

withholds approval of his transactions and protects him against abuse by third parties.

The Executive Committees of the Soviets of Working People's Deputies act as organs of guardianship and curatorship and when necessary appoint guardians and curators.

Such facts as birth, death and declaration of a person missing from his domicile as dead, entailing origination and termination of legal capacity, must be recorded at the Civil Registry Offices, which also record certain other facts vital to the personal and property interests of citizens, such as marriage, divorce, adoption, change of surname and name.

Name (given name and surname) is a characteristic of the individual and is entered in the records of acts of civil status at birth; name and surname may be changed, provided this does not contradict the interests of the state or other citizens, and is performed by the Civil Registry Office with observance of special rules of procedure.

Juridical persons are organisations of various kinds, including state industrial, commercial and other enterprises, repair and service stations, collective farms, rural consumers' societies, trade unions, scientific and sports societies, etc. But not every organisation is a juridical person; an example is a shop of a plant, however big and vital to the overall operation.

To be recognised as a juridical person, that is, an independent subject of law, an organisation must possess its own property distinct from that of any other organisation; it must have a definite organisational structure, which is, as a rule, defined in its charter or by-laws; it must have the right to act in its own name, acquire rights in property, assume obligations and sue and be sued in court; its assets are independently liable to its obligations.

Juridical persons possess legal capacity and legal ability. The scope of their legal capacity is determined by the purpose for which they have been formed (the principle of

special legal capacity), so that the legal capacity of a state industrial enterprise will differ from that of a trade union, scientific or athletic society, etc. Each of these may enter into civil legal relations only in accordance with the purposes and tasks established in its charter, and also in accordance with the approved planned assignments.

Juridical persons exercise their legal ability (acquire and exercise rights and incur and fulfil obligations) through their organs. Depending on the nature of the juridical person, its organs are either the individual chief or director, or general meeting, meeting of authorised representatives, board, etc. Their acts in the name of the juridical person in accordance with its charter or by-laws create for it rights and obligations. The organs of the juridical person and their jurisdiction are defined in the charter.

Juridical persons may participate in civil commerce and perform legal acts not only through their organs but also through their agents, who act by power of attorney issued by a competent organ of the juridical person.

Juridical persons are formed by: 1) order; 2) permission; 3) contract.

In the first instance, juridical persons are created by orders of appropriate state agencies (such as the Council of Ministers of the U.S.S.R. or of a Union Republic, the Economic Council of an economic administration area, the Executive Committee of a Soviet. State establishments and enterprises become juridical persons in this manner.

In the second instance, juridical persons make their appearance when their sponsors are granted permission by the competent state organ to form a society. That is the origin of scientific, sports and other societies.

In the third instance, no order or prior permission is required to form the juridical person. The law establishes the general procedure for the formation of this type of juridical person. Any group of persons fulfilling the requirements of the law governing the procedure may establish such a juridical person. The appropriate state organ

checks up on the legal formalities in the establishment of juridical persons of this type. It is up to the sponsors to decide whether or not it is expedient to set up the juridical person in question. Such is the origin of collective farms.

Juridical persons must have a charter (by-laws) defining its purpose, procedure, structure, and jurisdiction of its organs. They acquire legal capacity upon the approval of their charter (by-laws).

Juridical persons may terminate their existence. This may occur on the strength of the law or by order of the appropriate organ of state power. An enterprise may cease to be a juridical person by decision of the appropriate competent organ, in view of the commissioning in the same town of a new enterprise turning out identical items, of which the former becomes a department. The existence of co-operative and other voluntary organisations may be terminated by the law or by order of the appropriate organ of state power, if they deviate from the purposes defined by the charter or if the activities of their agencies clash with the interests of the state.

A juridical person may cease to exist by its own decision. This applies only to co-operatives and other voluntary organisations. A consumers' society may cease to exist as a juridical person by decision of a general meeting of its members. A juridical person may cease to exist on expiry of the term for which it was founded; with the attainment of the goal for which it was set up; if the membership of a mass or co-operative organisation falls below the minimum specified by the law or its charter.

A juridical person ceases to exist by terminating its activities and liquidating its property. In that case, a final settlement is effected with its debtors and creditors, and the remaining assets are transferred to agencies as specified by the charter or by law. But such practice is rare. As a rule, juridical persons are dissolved due to reorganisation: the merger of two or more juridical persons into a

new juridical person, or the division of a juridical person into two or more juridical persons. In a reorganisation, the juridical person which ceases to exist does not terminate its activities, nor is its property liquidated. All the rights and obligations of the juridical person which ceases to exist due to reorganisation are transferred to the juridical person or other juridical persons which are its legal successors.

Let us examine the main types of juridical persons.

1) *State economic enterprises and organisations.*

The Soviet state, having the plenitude of political authority and all the powers of an owner, is the bearer of state power and the subject of right in state socialist property. While being the sole subject of right in state property, the Soviet state does not, as a rule, administer it directly, but does so through its organs, which are assigned certain parts of the state property fund. These organs are independent subjects of civil law and juridical persons acting in their own name. In the use of property assigned to them these organs operate in accordance with approved plans.

Organs administering state property directly include mainly state economic enterprises, which operate on a self-supporting basis and possess the rights of juridical persons. They are independent in fulfilling the state plan and operate on their own initiative; they are offered material incentives and are responsible for the fulfilment of planned assignments. They are provided with circulating assets and have their own balance sheet; and their assets are liable for their obligations.

Operation on a self-supporting basis is closely tied in with the plan. The system of economic ties of socialist state organisations is such that failure by an enterprise to fulfil its planned assignments in quantity, assortment, and quality, lag in its sales or deliveries plan, accumulations plan, etc., have an immediate effect on its financial position. This remains sound so long as it fulfils and overfulfils its output plan, receives planned profits and observes the

planned periods for the circulation of its assets. In that case it settles its accounts with the other parties in due time, pays out bonuses for the overfulfilment of the plan, and makes deductions to its fund. Otherwise, it is short of ready money to cover its planned requirements, it delays settlement of accounts with its suppliers, and violates its obligations to other socialist organisations. These have recourse to the measures established by law, namely, they collect the forfeit and claim damages. This prompts inefficient organisations to mend their ways.

Enterprises are juridical persons enjoying the full measure of legal capacity granted to them by law and the charter.

Since the 1957 reform of management in industry, enterprises are subordinate to the Economic Council of their economic administration area. Industrial management is effected through economic associations (mostly branches of administration) of the Economic Councils.

Enterprises of local industry are subordinate to the local Soviets of Working People's Deputies through the corresponding departments of the Executive Committees of the Soviets (regional, city and district).

The Economic Councils and their economic associations and also the corresponding departments of the local Soviets managing enterprises are state organs exercising executive functions within the limits of their jurisdiction. Their relations with subordinate enterprises in this sphere are regulated by administrative law. Some departments or economic associations are also engaged in economic activities (mainly supplying subordinate enterprises and marketing their goods). As a rule, they operate on a self-supporting basis as independent juridical persons. Their relations with the enterprises in the supply of raw materials and other items, the marketing of goods, etc., are regulated by civil law.

Sometimes juridical persons have to exercise their functions not only in the place of their permanent activity, but

also elsewhere. With that end in view juridical persons establish branches and agencies, which are not juridical persons, although they have their own checking accounts and enter into transactions. The juridical persons are those organisations which establish the branches or agencies in question and are responsible for their activity.

2) *State establishments financed from the state or local budgets* and exercising administrative-political or socio-cultural functions are recognised as juridical persons in cases provided for by law or by a duly approved charter (by-laws). An example are institutions of higher learning, which are regarded as juridical persons on the strength of their model regulations.

3) *Co-operative organisations.* Collective farms and other co-operative organisations are an important factor in Soviet economic life.

Article 126 of the Constitution of the U.S.S.R. says that in conformity with the interests of the working people, and in order to develop the organising and political activity of the masses, citizens of the U.S.S.R. are guaranteed the right to unite in mass organisations; among them are co-operative organisations.

These are voluntary associations of citizens for joint production or consumption, whose members contribute to their assets and participate in their management. They are recognised as juridical persons on the strength of Articles 5 and 7 of the Constitution of the U.S.S.R., which lay down that collective farms and co-operative organisations are the subjects of right in co-operative and collective-farm property.

In contrast to state enterprises, co-operatives are share organisations. A share is the part of the assets contributed by each member, in cash or in the form of instruments and means of production, which are made co-operative property. Members enjoy equal rights regardless of the size of their share; each member has the right to participate in managing the affairs of the co-operative (the right of deci-

sive vote at general meetings, the right to elect and be elected to the board and other organs of the co-operative), the right to be supplied with material required for the performance of work, to receive an income from the co-operative organisation. Income is distributed in accordance with the labour contribution of each member. Members are free to leave the co-operative and have their share returned, less deductions to cover losses, if any.

Members fulfil their duties in conformity with the working rules and planned assignments. A member may be penalised for neglecting his duties and expelled for especially serious transgressions. On the whole, the rights and duties of members in their relations with the co-operative are regulated by its by-laws.

Depending on the nature of their activities the organs of co-operatives are the general meeting of members, a meeting of representatives, the board headed by the chairman, the chairman, and the auditing commission.

Collective farms are a prominent type of co-operative organisation in the U.S.S.R. The land on which they operate belongs to the state and is secured to the individual collective farms for use free of charge. Each collective farm operates under its rules adopted by the farmers and registered with the district Executive Committee.

In their economic activities, the collective farms, as juridical persons, enter into a variety of civil legal relations with state, co-operative, and mass organisations and citizens (purchases of farm produce by the state, commercial transactions, purchases of farming machinery and equipment by the collective farms, etc.). In their civil legal relations with the collective farms, as in all other relations with them, state organisations extend to them every possible assistance. Thus, the State Bank, in which the collective farms have their current accounts, helps them to recover debts, settle accounts, etc.

Other forms of co-operative organisations in the U.S.S.R. are consumers' and housing construction co-operatives.

The consumers' co-operative system consists of primary organisations (the artel, rural consumers' society) and unions of primary organisations (district, regional and republican unions). Each such unit is an independent juridical person. The system of consumers' co-operatives is headed by the Central Co-operative Union.

4) *Trade unions and other mass organisations.* Article 126 of the Constitution of the U.S.S.R. names other mass organisations, first and foremost the trade unions. The All-Union Central Council of Trade Unions and the republican, territorial, and regional councils of trade unions are juridical persons. The factory and office, city, district, regional, territorial, republican and central trade-union committees are also recognised as juridical persons. Slate-clubs under factory and office committees are also juridical persons. Mass organisations enjoying the rights of juridical persons include societies and their unions (scientific, sports, etc.), unions of workers in the arts and crafts (unions of writers, journalists, artists, composers, etc.).

Firm name. State enterprises and co-operative organisations transact business under their firm name. It must indicate the nature of their business and the state agency under the authority of which they operate or the co-operative organisation of which they are members. Besides, the firm name must include information necessary to differentiate it from enterprises of the same kind. The firm name is used by the enterprise in transactions, signs, advertisements, etc. It is prohibited for any enterprise to use the firm name of another or to establish an identical or similar firm name.

Trade marks and trade signs. These are established by Soviet civil law to enhance responsibility of socialist economic organisations for the quality of their goods.

The trade mark, being a distinctive feature of the enterprise, is used on its goods, packings and labels. It recites the name of the enterprise, its location, the organ under whose authority it operates, the grade of goods and the

standard number. The affixing of the trade mark on goods is compulsory.

The trade sign is used to distinguish goods according to type or grade. The trade sign may be in the form of a design or symbol, or distinctive packing, etc. The trade sign is not compulsory and does not ordinarily replace the trade name. Only certain big enterprises may, by special permission, dispense with the trade mark and use a trade sign indicating in a symbol the full or abbreviated name, the grade of goods, and the number of the standard. An enterprise may not use the trade sign of another, nor establish one identical with that of another.

The Soviet state as a subject of civil rights. The Soviet state does not, as a rule, participate in corporeal relations directly, but through its organs, which are independent subjects of civil law and juridical persons acting in their own name. But the Soviet state sometimes acts as a subject of civil rights and is liable for its obligations. In such cases, the state acts as the fisc, usually through the Ministry of Finance of the U.S.S.R. and its organs.

The Soviet state acts as a subject of civil rights in its foreign trade transactions, when these are concluded by trade missions abroad on behalf of the U.S.S.R. The Soviet Union is the subject of the rights and obligations created by such transactions. It should be noted that at present these missions very rarely enter into foreign trade transactions. They are usually concluded by export and import associations, which are independent juridical persons.

The Soviet state is regarded as the immediate subject of civil rights when ownerless, escheated or confiscated property passes to the ownership of the state.

Local Soviets of Working People's Deputies are organs of state power, but in some cases they may appear as subjects of civil law: they may, in the manner established by law, dispose of property under their authority and enter into the necessary transactions.

2. *An object in a civil legal relation is that at which the*

rights and obligations of the parties are directed. *Things* are highly important as objects of legal relations. They are material objects used to satisfy human needs. "Things" is a special term used in civil law to denote a great variety of objects, including buildings, animals, household articles, etc. The products of the human mind are also objects of civil law. These include inventions, works of literature and art, etc. There are other kinds of objects of civil law (like the acts of a person), but we shall here deal with things as objects of civil law. Being material, things have various physical and economic properties, which is a vital aspect of their legal status.

The civil codes of the R.S.F.S.R. and of the other Union Republics withdraw some things from civil commerce (e. g., CC 20). This means that some things may not in general be owned by citizens, while others may be the objects of transactions, provided special rules are observed. Thus, some things are the exclusive property of the state (the land, minerals, forests, waters, public railways and their rolling stock, etc.). Buildings, structures, enterprises and their equipment may be in the ownership of the state and of co-operative and other mass organisations.

Among the things withdrawn from civil commerce are arms, weapons, explosives, military equipment, radium, helium, virulent poisons, etc., but some of these things (such as hunting rifles) may be owned by individuals under a licence from the proper authorities. Gold, silver, platinum, and metals of the platinum group in coins and bullion, foreign currency, foreign currency cheques, promissory notes, money orders, foreign shares, bonds and their coupons may be objects of transactions only within the limits established by special laws. The State Bank of the U.S.S.R. has the exclusive right to enter into transactions involving these objects.

Civil law draws a distinction between *individually defined things* and things defined by *generic characteristics* (measure, weight, and number).

Individually defined things are those which differ from other things by characteristics proper only to them (a canvas by a well-known artist; an automobile of a well-known make with its engine number, etc.). Definition by individual or generic characteristics is not an inherent property of things. Things defined by generic characteristics may be individualised to become individually defined things. Thus, individually defined things are those which have been singled out from among identical things, as a suit selected in a store by a customer from among a number of similar suits for sale is also an individually defined thing.

The discrimination of things as individually defined and as defined by generic characteristics is essential in some cases of civil law, in particular, in the conveyance of the right of ownership in a thing. It is the general rule that the right of ownership of the acquiring party in an individually defined thing arises from the moment when contract is concluded, but with respect of things defined by generic characteristics, from the moment of delivery (CC 66), which may take place after the conclusion of contract.

In civil law a distinction is made between things *unitary* and *severable*. Physically all things are severable, but for the purposes of civil law what is important is whether severance results in loss of possibility of using them in accordance with their economic purpose. A thing is regarded as severable if it can be divided into two or more parts without prejudice to its economic purpose; otherwise it is regarded as unitary. This is essential in the separation of property: severable things are shared in kind, unitary things are delivered to one party, the others being paid compensation corresponding to their share.

Some things are intended to serve others and are connected with them by a common economic purpose, such as key and lock, radio tube and radio set, etc. Such things are called *accessories*, and are intended to serve the *principal* thing. Unless otherwise provided for by law or contract, the accessory follows the disposition of the principal thing.

Money is legal tender. This means that if a debt is expressed as a sum of money, the creditor cannot refuse to accept money in payment of the debt. Within the Soviet Union all payments can be made in Soviet currency only. Money is an object of civil law.

Securities are also objects of law. A security is a document without the presentation of which it is impossible to exercise the right recited in it. In the U.S.S.R. securities include cheques, bills of lading, etc. The most common are name or bearer securities. Commercial papers made payable to order are also used.

Property. Sometimes it is not individual things but the property of a person that is the object of a legal relation. Civil law defines property as the sum total of rights in material values belonging to a given subject of rights. Property includes the right of ownership of objects, the right to claim recovery of debts, such as the right to receive money given out as a loan, etc. Property may be burdened with debts (liabilities). In some cases the civil code uses the term "property" instead of the term "thing" (e. g., CC 152).

Incorporeal personal rights, inseparable from the person (his good name, honour, etc.), are protected by various branches of Soviet law (criminal, administrative, labour). They are also protected by civil law.

3. *Rights and obligations* constitute the content of any civil legal relation. They define the behaviour of the parties to a civil legal relation and their mutual claims and obligations.

The theory of Soviet civil law adheres to the following classification of subjective civil rights:

a) *Corporeal rights and incorporeal personal rights.* Corporeal rights are those that have a certain economic content. Incorporeal personal rights are inseparable from the persons; all citizens possess these rights. Incorporeal personal rights also include the personal right of authors and inventors in their works; these rights belong to citizens

only as a result of certain activity on their part (the creation of a literary work, invention, etc.).

b) *Rights in rem and rights arising from obligations.* Rights in rem arise in respect of things. The holder of these rights may exercise them directly, without reference to other persons. The principal right in rem is that of ownership. Rights arising from obligations include rights whose holder (obligee) claims from another (obligor) the performance of a specific act or abstention from an act.

4. *Juridical facts and transactions.* Juridical facts establish, modify or terminate civil legal relations.

There are two principal types of juridical facts: juridical events and juridical acts. Juridical events are human birth and death, natural phenomena, etc., and also the passage of a definite period of time, which is of significance to legal relations in all branches of law. The occurrence or non-occurrence of a juridical event does not depend on the will of the parties to a legal relation. *Juridical acts*, in contrast to juridical events, depend on the will of the parties, for they are human acts. These include commission of, or abstention from, an act. A distinction is made between lawful acts, i.e., those performed in accordance with the law, and unlawful acts, which contradict the law.

The most common lawful acts are those designed to produce a certain legal effect. They are usually called *transactions*, such as sale, purchase, and lease of property.

Relations between socialist organisations, such as factories, collective farms, etc., take the shape of transactions. Relations between socialist organisations and citizens (the purchase by citizens of goods in state and co-operative stores, lease by citizens of dwelling premises in the houses of local Soviets, etc.), and relations between citizens (sale, gift of articles of consumption, etc.), also take the form of transactions.

Transactions are described in the Civil Code of the R.S.F.S.R. They are acts intended to establish, modify, or terminate civil legal relations (CC 26). Legal transactions

are lawful acts intended to produce a certain legal effect. Persons entering a transaction desire to produce a certain legal effect; in consequence, legal transactions imply the expression of the will of the persons concerned. But for the will to produce the desired legal effect, it must not be contrary to law, and must be executed in the form prescribed by law.

Transactions are mostly the expression of at least two wills. Such legal transactions are called bilateral transactions or contracts (contract of sale, lease of property, contractor's agreement, etc.). Legal transactions in which the juridical effects are produced by the expression of a single will are called unilateral (testaments, acceptance of inheritance).

A distinction is drawn between gratuitous and onerous transactions. An onerous transaction is one establishing mutual obligations of both parties to perform a certain act, as in a contract of delivery, when a socialist organisation, the contractor, undertakes the obligation to deliver to another socialist organisation, the customer, certain goods, and the latter undertakes to pay a certain compensation therefor. If a transaction imposes the obligation to perform a certain act on one side only, such as a gift of property, it is called a gratuitous transaction.

Transactions may be conditional and future.

The will of the person entering a legal transaction must be executed in the proper form. Transactions may be concluded either orally or in writing (CC 27). A written transaction must be signed by the maker or makers. Written transactions are divided into ordinary and notarially certified transactions.

The form of transaction is at the discretion of the parties. But in some cases the law requires the performance of the legal transaction in a definite form. Thus, contracts for sums exceeding 500 rubles must be made in writing, except in cases specially provided for by law (CC 136). In some cases the law makes notarial certification of the transaction obligatory, that is, it must be executed in the

office of a notary public. Notarisation of transactions means that the notary verifies the identity of the parties entering the transaction and also its legality. Sales of buildings (CC 185), wills (testaments) (CC 425), and a number of other transactions require notarial certification.

Failure to comply with the form prescribed by law invalidates the transaction only if the consequences of non-compliance with the form are expressly provided for by law (CC 29). Thus, powers of attorney to manage property must be notarially certified under the penalty of invalidity (CC 266). If the law does not provide for invalidation of a transaction in consequence of non-compliance with the form, non-compliance with the form, while not invalidating the transaction, nevertheless impedes proceedings to prove rights and obligations arising from the transaction: in the event of a dispute the parties are deprived of the right to refer to the testimony of witnesses in evidence of the transaction, but are not deprived of the right to introduce written proof (CC 136 Note).

Transactions between socialist organisations must be made in writing. In some cases the formal instrument covering a transaction between two socialist organisations may be made subsequently, as a bill of sale.

For a transaction to be valid, 1) it must not be contrary to law and the rules of the socialist way of life; 2) the parties must have legal ability; 3) the will of the parties, as expressed in the transaction, must correspond to their actual will; and 4) when required by law, the will of the parties must be expressed in the proper form. Otherwise the transaction is a nullity and does not give rise to the desired legal effects. A transaction made for a purpose contrary to law, or to evade the law, or a transaction directed to the obvious prejudice of the state, is invalid (CC 30). No transaction is valid when made by a person who is legally incompetent or temporarily in a state of mind which precludes his understanding of the significance of his acts (CC 31).

The will of the parties to a transaction must be identical to their actual will; and so a person who concludes a legal transaction under the influence of fraud, threat, violence, or as a result of a mistake which has material significance, or as a result of a fraudulent agreement between his agent and the other party, may sue in court to have the transaction declared invalid in full or in part (CC 32).

Transactions concluded by persons under the pressure of distress and clearly to their disadvantage are invalid (CC 33). Transactions made by agreement of the parties for pretence only, and without intent to produce legal effect, are likewise invalid (CC 34).

Various consequences are attached to invalidation of a transaction, depending on the grounds. In the event the contract is invalid as one contrary to law or directed to the obvious prejudice of the state, none of the parties has the right to claim from the other the restoration of that which such party has performed under the contract. That which has been performed under the contract is collected for the benefit of the state (CC 147). If a contract is invalid as one made by an incompetent, each of the parties must return whatever was received under the contract. The party who has legal ability is obligated to make restitution to the incompetent party for actual damage (CC 148). In the event the contract has been declared invalid by reason of fraud, violence, threat or as intended to take advantage of distress, the party aggrieved has the right to claim from the other party the restoration of all that which was performed by this party. The other party has no such right: everything it has performed is collected for the benefit of the state. Where a contract is declared invalid owing to a mistake of one of the parties, each of the parties must restore to the other all that which it received under the contract. The party liable for the circumstances which caused the mistake is obligated to compensate the other party for the losses inflicted.

Agency. Transactions are usually concluded by the par-

ties in person. But they may also be done through agents. Agency is a relation in which transactions entered into by one person (agent) on behalf of another person (principal) within the limits of the agent's powers are binding on the principal and create for him rights and obligations. Some juridical acts of a personal nature, e.g., a testament, may not be performed through an agent.

There are two types of agency, depending on origin: agency by operation of law and voluntary agency. Agency by operation of law occurs in representation of incompetents. Parents and guardians of minors who have not reached the age of 14, and guardians of feeble-minded persons are their legal agents. Their powers are defined by law. Parents and guardians perform all transactions required for their children or wards. Voluntary agency arises from agency contract or labour contract.

Juridical persons take part in civil commerce through their organs, which operate under the charter of the juridical person, and their acts are regarded as those of the juridical person himself, and not of the agent. Juridical persons, as well as Soviet citizens, may assign the performance of certain acts to their agents who, like the agents of private persons, operate under a special authority, a power of attorney.

The power of attorney defines the limits within which the acts of the agent (attorney) create rights and obligations for the principal. Acts of the attorney performed over and above the powers specified in the power of attorney do not create rights and obligations for the principal. A power of attorney may specify the type of act to which the agent is empowered (to conclude a transaction or group of transactions, appear in court, manage property, etc.).

The power of attorney must be done in writing. In some cases it must be notarially certified (power of attorney to manage property).

A power of attorney may be issued for a period not exceeding three years. If the effective period of the power is

not stated therein, it remains in effect for one year from the date of issue. Within the term, the principal may at any time revoke the power of attorney, and the attorney may withdraw from it. The power of attorney may be terminated before the expiry of its term by the death of the principal or the attorney.

3. RIGHT OF OWNERSHIP

Forms and types of property. In the U.S.S.R. relations of production rest on the socialist ownership of the instruments and means of production. The dominance of socialist property is fixed in the Constitution of the U.S.S.R. (C USSR 4). It exists either in the form of state property, or of co-operative and collective-farm property.

In socialist society there is an expansion and consolidation of the personal property of citizens (articles of consumption). The Constitution of the U.S.S.R. defines the following types of personal property: 1) personal property, and 2) the personal property of the collective-farm household (C USSR 7 and 10).

Article 9 permits the small private economy of individual peasants and handicraftsmen based on their own labour and precluding the exploitation of the labour of others. The share of petty private economies in the national economy is negligible.

The scope of the right of ownership is revealed in the principal powers of the owner (CC 58), including the right to possess, to use, and to dispose of his property. The owner has the right to exercise these powers personally, or assign some to other persons (under contract of lease, the lessor makes available to the lessee the right of possessing and using a thing).

The right in state socialist property. State property in the U.S.S.R. belongs to the whole people. It is a single fund owned by the Soviet state. Except in cases when the

state appears as the subject of civil legal relations directly (see above), the right to possess, to use and to dispose of portions of the state property is exercised by state establishments and enterprises, which are assigned portions of the property for management. But they are not the owners of the property so assigned: the Soviet state remains the sole owner.

The land, mineral wealth, forests, and waters are objects of state property which may be owned by the state alone. They may be assigned to co-operative and other voluntary organisations and private persons for use only. The range of objects of state socialist property is not limited in any way.

The initial source of state property was the nationalisation and municipalisation of capitalist private property during the October Revolution. The state took possession of industrial enterprises, banks, railways, the basic housing facilities in the towns, etc. At present, the basic source of state property is extended socialist reproduction, which has created the enormous wealth now possessed by the Soviet people.

Another source is the taxes and duties collected by the Soviet state from the population, as well as all manner of civil legal transactions whereby the Soviet state acquires property from various persons.

Ownerless property, that is, property whose owner is unknown, or which has no owner, reverts to the ownership of the state. Dwelling-houses belonging to private persons by right in personal property may be transferred to the ownership of the state (the municipal fund) under a court order declaring them in a state of disrepair through neglect. Finds, things unclaimed by the owner within the specified period, as well as hidden treasure whose owner is unknown or has lost his right in it on the strength of the law, revert to the ownership of the state. The state acquires the right of ownership of the property which reverts to it on the strength of transactions declared invalid, and of

property in escheat. Requisitioned and confiscated property also reverts to the state.

In exercising management of the property secured to them, state establishments and enterprises possess, use, and dispose of that part of the aggregate state socialist property within the limits established by law and in strict conformity with approved plans.

Property assigned to a given state organisation for management consists of funds and assets, each of which has an independent purpose and may be used only in strict conformity with that purpose. Thus, the means earmarked for capital construction may not be used for other purposes, such as for stocking fuel, materials, etc. There is a substantial distinction in the legal status of the so-called fixed and circulating assets.

Fixed assets include buildings, structures, equipment, machinery, transport, and certain other objects (such as the most valuable and durable tools). *Circulating assets* include raw materials, fuel, finished goods, low-value tools and tools subject to rapid wear, etc.

Fixed assets are possessed and used by the organisation to which they are assigned by the proper organ of state power or state administration. Current assets are used independently by the state organisation to which they are assigned, in strict conformity with their purpose. Thus, an industrial enterprise uses its cash assets to pay wages, to buy raw materials, fuel, etc. The latter are used up in the process of production. In accordance with established plans, the finished product passes from the enterprise to the consumer by the conclusion of civil legal transactions (mainly contracts of delivery).

No sums may be adjudicated from the fixed assets of a state organisation at the instance of its creditors, who may, however, claim adjudication from its circulating assets, in accordance with established legal procedure. As a rule (except when an organisation is dissolved) sums are adjudicated from cash assets on a checking account at the bank.

The right in co-operative and collective-farm property. Like state property, co-operative and collective-farm property is socialist. But there is a distinction between them:

Co-operative and collective-farm property belongs to collective farms and co-operative societies (C USSR 5). Higher co-operative organisations have no right in the property owned by a lower co-operative organisation.

Being owners, collective farms and co-operatives possess, use, and dispose of their property in the order established by law and their rules. Local organs of power have no right to dispose of the property of collective farms and co-operative associations.

The property of the collective farms and co-operatives consists of their common enterprises, livestock, implements, buildings, structures, machines and equipment, and their products.

A characteristic of co-operative and collective-farm property is its various funds, which are assets set apart for the attainment of definite purposes.

Co-operative and collective-farm property originates with the voluntary pooling of resources by persons who become members. The principal instruments and means of production and seed stocks belonging to individual farmers are turned into collective property when they join a collective farm. In consumers' co-operatives cash payments are the only element collectivised by members.

But the main source of growing co-operative and collective-farm property is socialist reproduction and construction.

The Soviet state renders considerable financial and material assistance to the collective farms and co-operatives by transfers of various state property, free grants, tax rebates, etc.

Civil transactions (such as contract of sale) are another source of co-operative and collective-farm property.

The rules applied to co-operative and collective-farm property also apply to the property of trade unions and

other mass organisations, except as the law provides otherwise.

Right in personal property. The right of citizens and collective-farm households in personal property as fixed by the Constitution is a juridical instrument in the satisfaction of their material and cultural needs.

The labour of citizens in the socialist economy is the main source of personal property. Hence, the principal object of personal ownership is earned income in the form of wages, payment for work-day units on collective farms, etc.

Part of the aggregate social product goes to the personal consumption fund also in the form of stipends to students, pensions to the aged and disabled, allowances to mothers with many children, etc. They spend this on articles of consumption to satisfy their material and cultural requirements.

Personal property derives from the socialist ownership of the instruments and means of production and is bound up with it, for the main source of personal property is distribution of the aggregate social product earmarked for the consumption fund, chiefly according to labour.

Citizens of the U.S.S.R. are subjects of right in personal property, which is protected by law (C USSR 10). Every citizen of the U.S.S.R., regardless of sex, race, nationality, creed or origin, is entitled to own as personal property the objects provided for in the Constitution (C USSR 7). Every household in a collective farm has for its personal use a small plot, and, as its personal property, a subsidiary husbandry on the plot, a dwelling-house, livestock, poultry, and minor agricultural implements—in accordance with the Rules of the Agricultural Artel (C USSR 7). In this case it is the collective-farm household as such that is the subject of right in personal property. But members of these households have property which belongs to them personally and is not part of the collective-farm household property (clothes, bicycles, etc.).

The objects of right in personal property, according to the Constitution, include earned incomes and savings, dwelling-houses, subsidiary husbandries, articles of domestic economy and use, and articles of personal use and convenience, so that the circle of objects which may belong to citizens under the right in personal property is considerably narrower than that of objects under the right in state, and co-operative and collective-farm property. The objects of right in personal property are things intended to satisfy the material and cultural requirements of citizens. This is determined by the essence and role of personal property in socialist society.

Under the right in personal property citizens of the U.S.S.R. may purchase or build a one- or two-storey dwelling-house of from one to five rooms either in town or countryside, but with the total floor space not exceeding 60 sq. metres. The state renders great assistance to working people in the individual building of homes. Builders are allotted a plot of land and offered a building loan. It is the duty of enterprises and establishments to help their industrial and office workers, engineers and technicians in obtaining building materials, transportation, etc. They also offer their employees homes on easy terms and instalment plans.

Under no circumstances may personal property be a source of exploitation of the labour of others. This determines the content of the right in personal property and the powers of the owner. Under the right in personal property citizens are entitled to possess, use, and dispose of their property as they see fit, but not to exploit others or to derive unearned income.

The law protects civil rights except as they are exercised in contradiction to their social and economic purpose (CC 1). Hence, citizens may not use or dispose of their personal property to the prejudice of the interests of socialist society. Nor may owners use their property exclusively for the purpose of inflicting damage on other persons.

Earned income is the main source of personal property. Only as an exception (gift, inheritance) may citizens acquire things not from their earned income, but even then they usually receive objects previously acquired from earned income (of the giver or testator).

Civil legal transactions, such as sale, contractor's agreement, etc., are also a source of personal property. Incomes from subsidiary husbandries on personal house-and-garden plots are another source of personal property.

Property in joint ownership. The right of ownership to one object may belong to two or more persons jointly by shares (joint ownership). It occurs mostly in personal property relations (such as the joint ownership by several persons of a dwelling-house). One object may be jointly owned by two or more co-operative organisations (for instance, the joint ownership by two collective farms of a processing plant they built together).

Joint ownership relations arise by agreement between owners, for instance, from the joint purchase of a summer house by two citizens. These relations may arise without any agreement at all, when several heirs succeed to a unitary object.

The possession, use, and disposal of a joint property is decided by common agreement of all joint owners, and all disagreements are decided by a majority of votes (CC 62).

The right to a share of the joint property may be conveyed by one person to another on the basis of a civil legal transaction (sale, gift, testament). Each joint owner has the right to claim the separation of his share from the joint property, which is divided in kind, insofar as this is possible without disproportionate prejudice to its economic purpose; otherwise the joint owner demanding his share receives compensation in money.

Another form of ownership is undivided joint ownership. In contrast to joint ownership by shares, the owners do not have the right to a certain share of the property: it is

not owned by shares. Undivided joint property is shared only in partition or separation. Marital community property and the property of collective-farm households are undivided joint property.

The right of ownership is safeguarded by the various branches of socialist law: criminal, administrative, and civil. In civil law this is done in the most diverse ways, one of the main being the right of the owner to sue for the recovery of his property from the unlawful possession of another (CC 59). In this case, the owner who has been deprived of possession of his property requests the court to order the unlawful holder to return it to the rightful owner.

When a suit is instituted for recovery of property, a distinction is drawn between a holder in good faith and a holder in bad faith (unlawful holder). A holder is deemed in good faith if he did not know, and was not required to know, that his possession was unlawful. From a holder in good faith a thing may be claimed by its owner only if it was lost by the owner or stolen from him, or in general conveyed from his possession against his will. Otherwise, a holder in good faith is entitled to refuse return of the thing to its owner. There is no limitation to the recovery of a thing by its owner from a holder in bad faith (for example, if the holder was aware that the person who sold him the thing had no right to alienate it). State establishments and enterprises have the right to recover state property, unlawfully alienated by any means, from anyone who has acquired such property, whether it be a holder in good faith or a holder in bad faith (CC 60).

Special rules govern claims for recovery of securities payable to bearer, and bank notes. They cannot be claimed from a holder in good faith, even if they had been lost or stolen, or when they had belonged to the state and were unlawfully alienated by any means. Consequently, a holder in good faith of bank notes and securities payable to bearer is insured against claim for recovery by their former

owner in any case. Naturally, the owner of bank notes and securities payable to bearer is entitled to claim recovery from a holder in bad faith.

There is also the owner's right to sue for removal of all obstacles to the use of his thing, even when such do not deprive him of possession.

The right of ownership is protected not only by the rights in rem described above, but also by the law of obligations. Thus, the right of ownership is also protected by civil law, which establishes the obligation of a person, inflicting damage on the property of another, to make good such damage, as also the obligation imposed on a person who has been enriched at the expense of another, without sufficient ground provided by law or contract, to restitute that which he has groundlessly received.

4. GENERAL DOCTRINE OF OBLIGATIONS

Obligation is a legal relation by virtue of which one person has the right to claim from another performance of a specific act or abstention from an act.

Obligations are highly diverse in content. By virtue of an obligation the creditor may have the right to claim ownership of a thing (as under contract of sale) or use of a thing (as under contract for lease of property). By virtue of an obligation the creditor may also claim performance by the debtor of certain juridical acts (contract of agency), compensation for losses caused by the debtor, etc. In such cases the obligation of the debtor is to perform an act. But some obligations bind the debtor to abstain from an act. Thus, a publishing house to which the author has delivered his work under a publishing contract is under an obligation not to make any additions or changes in the work without the author's consent.

The law does not enumerate obligations by content, so that an obligation may call for any act or abstention from

an act, provided it does not violate the law and the rules of the socialist way of life.

In the event a debtor does not perform his obligation, the creditor is entitled to claim protection of his interests through a court or arbitration board.

Grounds from which obligations arise. Certain facts are required for an obligation to arise. Such facts are called grounds, the chief being economic planning acts by the state and contracts.

Economic life in the U.S.S.R. is shaped and guided by a state economic plan. Its fulfilment postulates administrative acts establishing planned assignments for various organisations. Any socialist organisation receiving a planned assignment by a state planning act is obligated to fulfil it. Thus, state planning acts may serve as grounds from which obligations arise, but these acts have varying force in creating obligations. In some cases contracts are superfluous and obligations arise directly from state planning acts, as in the obligation of a socialist organisation to deliver goods to export and import associations of the Ministry of Foreign Trade. But in most cases state planning acts create an obligation for socialist organisations to conclude a contract, as in relations between them involving delivery of goods, performance of work, and services.

Apart from these principal grounds on which obligations arise, there are others, such as a unilateral transaction, injury caused to another, unjust enrichment, etc.

The parties to an obligation. The person who has the right of claim in respect of another person is the *creditor*, and that other person, who is under an obligation to perform a specific act or abstain from an act, is the *debtor*.

In most relations involving obligation there is one creditor and one debtor. But an obligation may involve several creditors or several debtors. In an obligation involving several debtors liability may be *joint* and *several*, or *by share*. When liability is by share, each of the debtors is deemed liable to the creditor for the performance of his share of the

obligation and is not held liable in any way for the performance by the other debtors of their shares. The creditor is entitled to claim from each of the debtors performance of their respective shares. Performance by the debtors is in equal shares, unless it follows from law or contract that the shares of the several debtors are different.

When liability is joint and several each of the debtors is deemed liable to the creditor for the performance of the obligation in full. The creditor is entitled to claim from any of the debtors the performance of the whole obligation. He may claim from the debtors he chooses. The debtor to whom the creditor applies must perform the obligation, but he is entitled to enforce contribution from the other debtors in equal shares. The other debtors must perform their shares of the obligation to the debtor who has performed the obligation to the creditor in full or in a part exceeding his share. This falling back by a debtor under joint and several liability, who has performed the obligation, on the rest of the debtors to render performance of their shares of the obligation is called regress.

Title may likewise be either joint and several or by share. When title is by share each creditor is entitled to claim from the debtor performance of the share of the obligation due him; when claim is joint and several each of the creditors is entitled to demand performance of the whole obligation. Performance of the obligation to one of the creditors releases a debtor from obligation with respect to all the creditors. The creditor who has received performance must restitute the shares to the other creditors to which they were entitled.

Where several debtors or several creditors are parties to a single obligation, the debtors are usually deemed liable, and the creditors entitled, by share. Joint and several liability and joint and several title arise on the basis of contract or in cases specifically provided by law (CC 115). The former may also flow from the object of the obligation being unitary. Thus, if two persons have sold a

house belonging to them by right in personal property they are jointly and severally liable as sellers for performance to the buyer. Several persons who jointly cause an injury to a third person are held liable jointly and severally for reparation of injury (CC 408). A debtor and his surety or sureties are also deemed jointly and severally liable to the creditor (CC 241). In the last two cases the joint and several nature of the obligation is statutory.

Persons initially taking part in an obligation may be substituted by others, as when a creditor assigns his claim (assignment of claim) or when the debtor assigns his obligation to another person (assignment of debt).

Assignment of claim is permitted insofar as it does not contradict the law. In relations between socialist organisations assignment of claim is not allowed, except when in conformity with the plan. Assignment of claim is not permitted insofar as it is connected with the person of the creditor.

Assignment of claim does not require the consent of the debtor. But he must be notified of the change of creditor. Since it is far from immaterial to the creditor who is to perform the obligation, assignment by the debtor of the debt to another always requires the consent of the creditor. As with assignment of claim, assignment of debt in obligations between socialist organisations is allowed only when in conformity with their plans.

Performance of obligations. Legal relations involving obligation are designed to promote the fulfilment of national economic plans and satisfy the material, cultural, and other requirements of the people. Non-performance of obligation by a debtor frustrates the fulfilment of planned assignments and jeopardises the satisfaction of the legitimate needs of citizens. An obligation must be fulfilled in kind and in strict accordance with its content (the principle of specific performance). To that end the debtor undertakes to bend every effort and make use of all possibilities at his disposal.

Contracts between socialist organisations must provide for the consequences of non-performance of contractual obligations (forfeit, penalties, fines, recovery of loss). But the payment of such monetary compensation does not absolve the paying party from performance of the contract: the contract must be performed even if the party violating it has already been penalised. The above monetary compensations are an inducement to specific performance of the obligation undertaken by a socialist organisation, and not an absolution from performance. But demand for specific performance of an obligation must not exceed the limits to which it accords with the planned assignment. If the planned assignment in question is cancelled after non-performance of the obligation, with it goes the need of specific performance. But this does not absolve the debtor from the obligation to pay the creditor monetary compensation for non-performance or improper performance of the obligation (recovery of losses, payment of forfeit).

The debtor must perform his obligation in full. The creditor has the right to refuse acceptance of performance in instalments unless otherwise provided for by contract or law (CC 109). Nor must the debtor without the consent of the creditor substitute that which he had to perform by something else.

As a general rule the debtor must perform his obligation in person. But in some cases it makes no difference to the creditor whether performance is by the debtor in person or by proxy. In such cases performance may be effected by a third person (for instance, the payment by another person of rent, repayment of loan, etc.). In relations between socialist organisations performance of obligation by another organisation is allowed to the extent that it does not contradict the plan and the rules governing settlement of accounts between enterprises.

The creditor or his agent is the person to whom the obligation must be performed. The creditor is entitled,

however, to designate a person to whom the debtor is to perform.

Performance must be effected to time determined by law or contract (CC 111). A debtor is deemed in delay in performance if he fails to carry out his obligation within the prescribed period of time, without valid reason. He is then obligated to compensate the creditor for loss sustained by such delay, and pay the forfeits or fines provided by the contract. The debtor is rendered liable for non-performance if it becomes impossible by accident after such delay. If in consequence of the delay the performance is no longer of interest to the creditor, he may refuse to accept performance and may demand compensation of loss for non-performance (CC 121). A creditor may also be deemed in delay if he refuses to accept performance without any lawful ground. He must then compensate loss caused by his delay and pay the penalties provided by law or contract (fines, forfeits) (CC 31).

The obligation must be performed at the place specified in the contract or that which flows from the substance of the obligation.

Where the debtor fails to perform his obligation, the creditor is entitled to receive compensation for loss caused by the non-performance (CC 117). A creditor demanding compensation for loss caused by the debtor's non-performance must prove the fact and the actual loss sustained, and also that loss resulted directly from non-performance of obligation by the debtor.

But the debtor is not deemed liable for non-performance in all cases without exception. It is the general rule that the debtor's liability for non-performance rests on his guilt, which includes both intent and negligence. To relieve himself from liability the debtor must prove that non-performance resulted from circumstances beyond his control and in spite of his having done everything possible, i.e., that it was accidental. The debtor can also relieve himself

from liability for non-performance by proving that it was the fault of the creditor (CC 118).

Guarantees of obligations. Apart from measures of compulsion designed to ensure performance of obligation by the debtor, the law additionally reinforces the creditor's position: it provides four types of guarantees of obligation, namely, forfeit, mortgage, earnest and surety.

Forfeit is a sum of money which one party undertakes to pay to another in the event of non-performance or improper performance of its obligations. In such cases liability to pay forfeit is usually established by an agreement of the parties. But forfeit may also be statutory (as for delay in the payment of an account by a socialist organisation or the payment of rent). In relations between socialist organisations the contract must contain a forfeit clause for non-performance or delay in performance.

By virtue of *mortgage*, the creditor has the right, in case of non-performance by the debtor of the claim guaranteed by the mortgage, to satisfy such claim out of the value of the mortgaged property prior to other creditors.

The law establishes, however, that some claims to the debtor must be satisfied out of the value of the mortgaged property prior to the claim of the mortgagee, if the other property of the mortgagor is insufficient to satisfy these claims (CC 101). These include claims to discharge liabilities for wages, and all claims on the same footing as wages, payments from social insurance and taxes, and the like. The claim of the mortgagee is satisfied only after such claims (if any).

As a rule, mortgaged property is delivered to the mortgagee, but he is not entitled to make use of the mortgaged thing. By agreement of the parties, it may be retained by the mortgagor. The party retaining the mortgaged property (mortgagee or mortgagor) must keep it in a fitting manner and take due care of it.

A mortgage arises either from contract or from specific provision of law (mortgage at law).

An *earnest* is a sum of money or other property value given by one contracting party to another on account of payment due under the contract to attest the making of the contract and to guarantee its performance. When the party who tendered the earnest becomes liable for non-performance of the contract, he forfeits the earnest. When the recipient of the earnest becomes liable for non-performance of the contract, he must return double the value of the earnest.

By the contract of *suretyship*, one person (the surety) undertakes liability for the performance of an obligation by another person in the event the latter proves to be a bad debtor. Suretyship is a contract supplementary to the main contract establishing the obligation of the debtor.

Of the four types of guarantees of obligations in relations between socialist organisations forfeit is the most common. Suretyship is sometimes used in relations between citizens and never between organisations. Earnest is used only in relations between citizens; socialist organisations are forbidden to tender earnest.

Termination of obligation. Performance is the chief way of terminating an obligation, but it may also be terminated by set-off of a counter claim of similar kind provided the claims under both obligations are due (CC 129 b). An obligation may be terminated by agreement of the parties (CC 129 d), who may agree to conclude a new contract to replace the former, which is thereby terminated, for example, a debt arising from a contract of sale may be given the form of a loan obligation (CC 209). The parties may conclude a contract substituting performance, under which the debtor must perform a different act to the one initially provided for by the obligation. The sides may make a composition waiving a part of their claims against each other. But in relations between socialist organisations termination of obligations by agreement of the parties is permitted insofar as it does not contradict the plan. Waiver of

debt is forbidden altogether as violating contractual and financial rules.

The death of a creditor or debtor does not, as a rule, terminate an obligation: it passes to their successors. But an obligation which is so closely bound up with the person of the creditor or the debtor as to preclude substitution, terminates with their death (as the obligation of an author under a contract with a publishing house).

An obligation may be terminated by the merger of the debtor and creditor in one person.

An obligation may be terminated because of impossibility of performance, for which the debtor is not liable. For the obligation to be terminated on this ground, the debtor must prove that impossibility of performance is due to circumstances beyond his control, or owing to intent or negligence on the part of the creditor.

An obligation may also be terminated by an order of the appropriate organ of state power, a method used in relations between state organisations.

5. OBLIGATIONS ARISING FROM CONTRACTS

A contract is an agreement of two or more persons, establishing, modifying or terminating civil legal relations.

Contract is the most common ground from which obligations arise. It is widely used in relations between socialist organisations.

Socialist organisations operate in strict accordance with the state economic plan. Fulfilment of the plan presumes broad initiative and independent action on their part. They use contracts to determine the best ways of fulfilling their planned assignments, to specify the time, and to establish commercial guarantees of their proper fulfilment.

Contract, as ground from which obligations arise, is in extensive use in relations between socialist organisations and private persons (in the satisfaction of the material and

cultural needs of the latter). Contracts are also concluded between private persons (sale and purchase of things, lease of dwelling premises by their owners, etc.).

Contracts are legally binding on the persons concluding them. But a contract may be made for the benefit of a third party: under such a contract independent title is acquired by a person not taking part in its conclusion (CC 140).

As a rule, the parties are free to define the content of a contract (the terms). But there are statutory provisions for some contracts, depending on the nature of the relations involved. The clear-cut regulation of relations between socialist organisations working on the state economic plan is of special importance. Thus, planned assignments determine the principal obligations of the parties, the price, time, and place of performance, etc., all of which constitute the content of the contract. Standard contracts are approved by the Soviet Government and other organs.

An important factor in determining the relations of the parties is the moment when the contract is deemed concluded, for it is then that the parties are legally bound with each other. As a general rule, a contract is deemed concluded when the parties reach agreement in all essential points thereof. Essential points of a contract are those on which agreement is necessary to make the contract effective. In any event, they are the subject matter of the contract, the price, and the time (CC 130). Essential points include other particulars with respect to which, according to the preliminary declaration of either party, agreement is to be reached. If a type of contract requires a certain form specified by law, the contract is regarded as valid from the time it is given due form; thus, if the law requires obligatory notarial certification, the contract is valid from the time of such certification.

There is a special procedure for the conclusion of contracts between socialist organisations. Since such con-

tracts are designed to promote the best possible fulfilment of the state economic plan, they are concluded in an organised manner. The Soviet Government issues instructions on the conclusion of contracts between socialist organisations. Organisations which in accordance with the plan must enter into contractual relations have no right to evade conclusion of such contracts. In the event one of the parties evades conclusion of contract prescribed by the proper planning act, the other party may apply to an arbitration board to make the first party conclude the contract prescribed by the plan. The award of the arbitration board is obligatory for the other party.

When socialist organisations have to conclude contracts in conformity with the plan, but are unable to arrive at agreement on the terms, they also submit their dispute to an arbitration board, which makes an award on the strength of the law, approved plans and other acts regulating relations between socialist organisations (regulations governing deliveries, instructions concerning the quantity and quality of goods to be accepted, special terms of delivery for a given type of article, etc.).

Reference of disputes to an arbitration board over the binding of parties to conclude contracts and their terms is known as pre-contractual arbitration.

Since a contract concluded by socialist organisations on the basis of a planning act is designed to fulfil the plan, the parties must perform such a contract, and may not relieve themselves of this obligation either by unilateral act or by mutual agreement: it cannot be nullified or terminated by either side or by mutual agreement. Nor can changes be made in the terms of a contract concluded by agreement of the sides.

Soviet civil law does not recognise any limitations on the type of contract. The practice of contractual relations is potentially broader than the circle of contracts enumerated in the civil codes of the Union Republics, and growing requirements give rise to new types of contracts.

This chapter analyses some of the more common types of contracts.

Contract of sale. This type of contract is among the most common and occurs in relations between state organisations and co-operatives and collective farms; collective farms and other types of co-operatives; socialist organisations and private persons (Soviet trade); and between private persons.

By the contract of sale one party (the seller) undertakes to transfer property to the ownership of another party (the buyer), while the buyer undertakes to accept the property and to pay the price agreed upon (CC 180). Thus, according to the Civil Code, the purpose of the contract of sale is transfer of the right of ownership.

Sales for cash may be made orally in any amount (CC 184). Sales of dwelling-houses must be made in writing, notarially certified and recorded by the proper municipal agency (CC 185). In all other cases the form of contract of sale must conform to the general requirements as to the form of transaction.

The seller is responsible for the thing sold being his property, and no one else can have a legal claim to it. If a third party begins an action for the recovery of the property purchased for a reason antedating the sale, the seller must join the action as a party and defend the buyer from the recovery of the disputed property. If the property is nevertheless recovered, that is, it transpires that a third party has a legal claim to the property, the seller must compensate the buyer for all loss. If the buyer does not cite the seller as a party to the action, and provided the seller proves that his participation could have prevented the recovery of the property sold, the seller is relieved from such liability.

Under contract of sale the buyer must accept the property and pay the agreed price. Except as the contract provides for the contrary, the acts on the part of seller and buyer must be performed simultaneously (CC 188). If the

seller fails, in breach of the contract, to deliver to the buyer the property sold, or offers property which does not correspond to the terms of the contract, the buyer may demand delivery to him of the property sold, together with compensation of loss; or the buyer may rescind the contract and demand compensation for all loss sustained by him through the violation of the contract by the seller. If the buyer, in violation of the contract, refuses to accept the property or to pay the agreed price for it, the seller may either demand performance of the contract and payment of the agreed price, together with compensation of the loss caused by the buyer's fault, or he may rescind the contract on his part and likewise demand compensation of loss sustained by him through violation of the contract by the buyer.

The moment of conveyance from seller to buyer of the right of ownership in the property sold depends on whether the object of the contract is an individually defined thing, or a thing defined by generic characteristics. The right of ownership in an individually defined thing passes to the buyer from the moment when the contract is concluded, regardless of whether or not the thing is delivered to him. The right of ownership in a thing defined by generic characteristics passes to the buyer from the moment of delivery under the contract (CC 66). If the seller of an individually defined thing sells the same to several persons, the right of ownership, says the law, is vested in that buyer with whom the contract was first concluded (seniority). If it is impossible to determine seniority, the buyer to whom the thing has been delivered is deemed the owner. If an action for delivery of the thing is instituted by one of the buyers before the thing has been delivered to any one of them, the person who first sues is deemed to be the owner (CC 191).

The moment when the right of ownership is conveyed is of great importance in determining who bears the risk of accidental loss. As a rule, the risk of accidental loss of

property sold attaches to the buyer simultaneously with the transfer to him of the right of ownership. But the parties may make a different agreement, in which case the risk of accidental loss is borne in conformity with the contract. If the seller is in delay in delivering the sold property, he bears the risk of accidental loss of the property until delivery is accomplished, regardless of when the right of ownership passed to the buyer. Similarly, if the buyer is in delay in accepting the things, he bears the risk of accidental loss (CC 186).

The seller is liable to the buyer for the lack of quality in the property sold, as well as for defects which decrease its value or its suitability to its usual purpose or that specified by the contract. The seller is not liable for defects of the property sold if such defects were known to the buyer at the time of making the contract, or could have been ascertained by the buyer by the exercise of due diligence. In the latter case, the seller is deemed liable only if he denied the presence of the defects concerned. The buyer must immediately inform the seller concerning the defects discovered. The buyer who has discovered defects in the property sold and has given due notice thereof may demand either delivery of articles of proper quality (if the things sold are defined by generic characteristics), or proportionate decrease of purchase price, or rescission of the contract and compensation for all damages.

Socialist organisations selling goods must make sure that buyers receive goods of high quality, in full measure and at the proper price. Criminal responsibility is prescribed for giving false weights and measures. Price lists are posted in stores for the information of the buyers. The goods must conform to the established standards. Some types of consumer goods (footwear, passenger cars, watches, television sets, motor cycles, refrigerators, vacuum cleaners, etc.) are covered by a guarantee period, during which the seller—the store—is liable for the quality of the goods. If defects are discovered in the goods within the

specified period, the store, at the demand of the buyer, makes the necessary repairs, or replaces the said thing by one of good quality, or returns the money paid.

Contract of delivery. Under contract of delivery between state organisations, the contractor must deliver to the customer possession, use, and disposal of property constituting the volume of delivery, and the customer must accept the property and pay the agreed price. If contract of delivery is concluded between a state organisation and a collective farm, co-operative or mass organisation, or between collective farms, co-operatives and mass organisations, the contractor must convey to the customer the right of ownership in the property delivered.

Contract of delivery is widely used by socialist organisations and is of great economic importance: almost the entire flow of socialist production takes the form of contract of delivery.

Contract of delivery has the following specific features: 1) it is based on definite planned assignments, on the strength of which one socialist organisation is obligated to deliver certain items to another; 2) it presumes, as a general rule, long-standing relations between the parties. That is why the property which is the object of contract of delivery may not even exist when the contract is concluded. Since contracts are mainly concluded to cover deliveries of goods for a year or a quarter ahead, the goods are not in existence when the contract is concluded; 3) most frequently the objects of contract of delivery are things defined by generic characteristics; 4) as a rule, the goods are not delivered in a single lot but in instalments, at dates specified in the contract. Payment is likewise effected in instalments and in conformity with the price of goods delivered.

Relations of socialist organisations involving delivery of goods are subject to the Regulations Governing Delivery of Industrial Goods and the Regulations Governing Delivery of Consumer Goods, approved by the Council of

Ministers of the U.S.S.R. They make conclusion of contracts of delivery obligatory and specify the procedure; determine the balance between the planned assignments for delivery of goods and the contracts concluded on their basis, the procedure of establishing the quantity, quality and assortment of goods, and prices, calculations and other terms of delivery.

The regulations cover the principal and general terms of delivery, which are common to all contractors and customers. Some of the instructions are specific and dispositive: the parties may settle their relations in a different manner.

The content of a contract of delivery is in the main determined by the planned assignment underlying a given contract. In accordance with the planned assignment and the regulations governing delivery the parties specify their relations in every detail, depending on the concrete conditions of a given delivery.

Contracts of delivery are usually concluded for a year or for the period required to manufacture and deliver the goods. When there are long-standing economic ties between the contractor and customer, they may extend the contract to be effective the following year and must then coordinate the quantity, assortment or technical characteristics of the goods subject to delivery the following year.

Depending on the nature of the planned assignment contracts of delivery may be concluded for shorter periods, such as a season or a quarter.

Socialist organisations may also conclude contracts providing for delivery of goods in a single lot. Such contracts are also concluded on the basis of a planned assignment.

Contracts for delivery of goods in a single lot, as well as for delivery of relatively small quantities (not more than a goods van or for a sum not exceeding 7,500 rubles), are simplified.

Contract of delivery must be set out in concrete detail. Socialist organisations must stipulate the following: pre-

cise name of the goods delivered, their quantity, assortment and quality (established by reference to standards, technical specifications, samples), the period of operation of contract, instalment dates, standards of packing, prices, settlement of accounts, and penalties for non-performance or improper performance. Depending on the concrete relations between the socialist organisations, their contracts define specifications and orders, delivery and acceptance of goods, verification of quality, transportation, packing, containers, etc. When the principal terms of delivery governing these relations are to hand, they are incorporated in the contract by reference to the corresponding clauses.

Contract of delivery must be fulfilled precisely as specified in the terms. If delivery is in excess of the quantity stipulated in the contract, the customer is entitled to refuse to pay for the excess delivery. But he must accept the goods for safe-keeping at the expense of the contractor. If delivery is short of the contracted quantity, the customer has the right to demand shipment of the undelivered goods in the next quarter or month. In any event the forfeit stipulated in the contract is collected from the contractor. Delivered goods must strictly conform to the assortment specified in the contract. The contractor is penalised for non-delivery of each type of goods. The fine is imposed even if delivery has been completed in total value.

The goods must conform to the duly approved all-Union quality standards. In the absence of an all-Union standard, quality is determined by specifications or samples approved by the proper organs or co-ordinated by the parties to the contract. A fine is imposed on the contractor for delivery of sub-standard goods or defective goods.

The customer is entitled and in some cases obligated (as in delivery of bad quality foodstuffs) to reject such goods and to demand refund of moneys paid for them and replacements of the proper quality.

The date of delivery is also precisely specified, and is obligatory. The customer has the right to reject consign-

ments of goods delivered in delay, but the contractor must be duly notified thereof. If the goods are shipped by the contractor before he receives such notification, the customer is not entitled to refuse acceptance of and payment for the consignment in question. In the event of delivery prior to the specified date the customer may refuse payment for the goods received until the date specified in the contract. Storage of goods delivered prior to date is at the expense of the contractor.

By the *contract of loan*, one party (the lender) transfers to the ownership of the other party (the borrower) money or things defined by generic characteristics, and the borrower undertakes to return to the lender the sum of money received or a number of things equal to that borrowed and of the same kind or quality, together with interest or without it (CC 208). Thus, the transfer of ownership of a certain sum of money or things defined by generic characteristics (say, 20 kg. of grain) constitutes the content of a contract of loan, with the person who receives the money or things (the borrower) undertaking to return not the same money or things, but an equal quantity of them. Contract of loan may be interest bearing or interest free.

In relations between private persons contract of loan is usually in the nature of a friendly service and is interest free. Contract of loan is common in relations between individuals and organisations. Citizens may obtain loans by pledging household articles or personal effects with municipal pawnshops; or from banks for individual housing construction. In such cases socialist organisations act as lenders, and citizens, as borrowers.

Contract of loan is often concluded between socialist organisations, as when a collective farm lends another a quantity of grain or fodder. Socialist economic organisations perform loan operations only through banks.

Contract of loan is a unilateral contract, because it creates title only for the lender; for the borrower it cre-

ates the obligation to return to the lender the money borrowed or a number of things equal to that borrowed and of the same kind and quality.

A contract of loan for a sum exceeding five rubles must be in writing. Non-compliance does not invalidate the contract of loan, but in the event of a dispute, the parties are deprived of the right to refer to the testimony of witnesses in evidence of the contract, but not of the right to introduce written proof of its conclusion and its terms. Special rules apply to contracts of loan to which at least one of the parties is a state socialist organisation (as with deposits at state labour savings-banks, loans by pawnshops, loans for individual housing construction).

Contractor's agreement. By contractor's agreement, one party (the contractor) binds himself to perform at his own risk certain work at the request of the other party (customer), and the latter undertakes to pay compensation for work performed (CC 220). Contractor's agreement is sometimes called an order.

Relations given form in contractor's agreements are highly diverse. A special type of contractor's agreement is relations in capital construction, building work (see below). Contractor's agreement regulates relations in everyday services offered to citizens (tailoring, shoe-making, laundering, etc.).

The subject matter of a contractor's agreement is performance by the contractor of the work specified and delivery of the job to the customer. When the contractor has undertaken to manufacture a thing, the subject matter of the contract is manufacture and delivery of the said thing to the customer. The contractor must perform the work at his own cost and expense. But the parties to the contract may provide for delivery by the customer of materials, means of production or tools to the contractor. The contractor must then use these materials sparingly, take steps to assure the safety of the property entrusted to him, and return the remainder of the materials to the customer

when the job is completed. The contractor must deliver the job in accordance with the contract and without defects which may make the job unsuitable to either the purpose stipulated in the contract or to its usual purpose. The main duties of the customer are: timely compensation for the work done by the contractor and due acceptance of the work performed. The customer must accept the work in accordance with the contract and must immediately give notice to the contractor of the defects disclosed.

The contractor is deemed liable for the quality of performance. If the work done does not satisfy the necessary requirements, the contractor, in accordance with the demand of the customer, must: correct the defects within an appropriate time without charge, insofar as such correction is possible without disproportionate expense; or make a corresponding reduction in the contract price; or if the contract is rescinded by the customer, to compensate him for the loss. The choice of satisfaction is up to the customer.

Contractor's agreement is deemed performed only if the contractor has delivered the result of his work as specified in the contract. If in the course of the work the subject matter of the contract is accidentally destroyed (say, in a fire) the contractor is not entitled to claim of the customer compensation for the work performed. As has been said, the contractor performs the work "at his own risk".

Like contract of delivery, *contractor's agreement on capital construction* is covered by planning. Under such contract between state, co-operative and other organisations, one party (the contractor) undertakes to perform capital work with his own resources at the order of the other party (the customer), and the latter undertakes to accept the work performed in the period stipulated by the contract and pay its cost in accordance with the estimate. A contractor's agreement on capital construction may be concluded only if the construction job is an item in the plan.

It also requires duly approved blueprints and estimates for the construction job as a whole.

If the construction is to go on for more than a year the contractor and the customer conclude a general contract for the entire period of construction and for the whole volume of work, with additional contracts covering work to be done in every single year.

An organisation concluding a contractor's agreement for the whole project is called the general contractor, and may assign under contract the performance of parts of the construction work (say, assembly or finishing) to sub-contractors. But the general contractor is deemed liable to the customer for the whole job, including the work performed by its sub-contractors.

The customer has the right of systematic control over the performance of construction work, and he takes part in organising the construction work (obtaining documents for the building site, blueprints, technical plans, specifications, etc.).

Disbursements for capital construction are effected through customers' accounts in their banks (Construction Bank, State Bank). The customers dispose of their capital construction accounts in conformity with the approved plans and estimates. In making disbursements the bank verifies the state of the building inventory and approved estimates and technical plans, checks the prices of materials purchased and rates for services rendered against the prices and rates approved in the estimates, etc. Banks also extend credits to building organisations.

When the separate units and the job as a whole are completed, the work is delivered to the customer by the general contractor. A deed is drawn up reciting the work performed, the extent to which it corresponds to the technical plans, blueprints and standards specified in the contract, and the quality. The work performed by the sub-contractors is accepted by the general contractor who delivers it to the customer as part of the completed job.

Before deed of acceptance is done the customer is not entitled to make use of the finished objects for his own needs or to put them into operation.

The law provides for the liability of the parties in the event of improper performance of the contract. If performance is in delay the contractor pays the customer a forfeit. If the customer delays payment due, a fine is imposed on him for every day in delay in the form of a certain percentage (usually 0.05 per cent) of the sum overdue. If there is delay in acceptance of a unit ready for delivery, the customer pays the contractor a fine for every day overdue. A forfeit or fine is also exacted in the event of delay by the customer in making available the construction site, blueprints, etc.

Lease of property. Under contract of lease of property, one party (lessor) undertakes to place property for temporary use by the other party (lessee) for a definite compensation (CC 152). Contract of lease of property is sometimes called hire (as of sports goods, automobiles). Renting of housing which is very common also comes under contract of lease of property.

Contract of lease of property does not transfer ownership but only use of property, and when the term of a contract expires, it must be returned to the owner.

Only a durable individually defined thing (a building on a definite street, a car of a definite make, etc.) may be the object of contract of lease of property. Compensation (rent) is paid for the use of the property leased.

Contract of lease of property may be concluded for a definite period, or without indicating any period of time; in the latter instance, the contract is deemed made for an indefinite period of time (CC 155). The term of lease must not exceed 12 years. Contracts of lease of property for a term longer than one year must be made in writing.

The main duty of the lessor is to surrender the property to the lessee within the specified time. If the lessor fails to surrender the leased property to the lessee's use, the les-

see may either claim by court action delivery of said property, or may withdraw from the contract and seek damages caused by non-performance.

The lessee acquires the right to possess and use the property leased. He is entitled to possess and use the property only within the limits of the contract and in keeping with the economic purpose of the property. The lessee must pay the lessor compensation, and upon the termination of the term of the contract the lessee must surrender the property to the lessor in good condition.

Where the right of ownership to leased property is transferred by the lessor to another party, the lease contract remains in force for the new owner. The law gives the lessee the right to invoke the court for protection against everyone who encroaches upon his possession, including the owner.

Ordinarily, the lessee uses the leased property himself. But the law gives him the right, except as the contract provides otherwise, to sublet the entire rented property or a part thereof under a contract of sublease. The sublessee does not enter into any juridical relations with the lessor. The contract of sublease gives rise to juridical relations only between the sublessee and the lessee. Consequently, the entire liability to the lessor under the terms of the contract is borne by the lessee, and not the sublessee. State property may be sublet only upon written permission from the lessor.

A distinction must be made between sublease and transfer of lease when the lessee is replaced by another person to whom all the rights and obligations of the lessee under the contract are transferred. This may be done only with the consent of the lessor.

Contract of lease of housing. The bulk of the housing facilities in the towns and industrial centres are state property. Most of it is under the authority of the local Soviets of Working People's Deputies (district and city). Dwelling-houses built at the expense of and by state enterprises,

establishments, and agencies for their workers remain under their authority. Housing is used under contract of lease of housing.

In houses belonging to the state (local Soviets, enterprises, establishments) unoccupied living space is made available to citizens for use only on the strength of orders issued by the housing boards of municipal departments of the local Soviets. In houses belonging to co-operatives and mass organisations, living space may be made available for use by decision of these organisations. On the strength of these orders and decisions the person to whom the living space is made available concludes a contract of lease of housing with the proper house management office. In houses belonging to private persons by right in personal property living space may be leased only by an agreement of the parties.

A lessee who faithfully performs his duties under the contract has the preferred right to extend the contract when its term expires, so that expiry of the contract does not terminate the rights and obligations of the parties. The contract must be renewed between the same parties and on the same terms.

Under contract of lease of housing the lessor must make available for the use of the lessee certain dwelling premises, as well as all subsidiary service premises. It is the duty of the lessor to overhaul the premises he has leased (unless otherwise provided by the contract). The lessee must carry out current repairs to the premises he occupies, including the subsidiary premises (unless otherwise specified in the contract). In houses belonging to the state, co-operatives and mass organisations, some current repairs are carried out by the lessor. In the event a party neglects his duties in carrying out repairs, the other party is entitled to carry out the necessary repairs himself and charge the costs to the former party. The lessee must use the premises made available to him in keeping with their purpose and maintain them in good repair.

Rent is determined by law and cannot be established by an agreement of the parties.

Contract of lease of housing may be rescinded and the occupant evicted before expiry of the term only by a court, in cases established by law, and with the responsible agencies providing the evicted person with other equivalent premises.

Contract of lease of dwelling premises may be rescinded and the occupant evicted by a court order without being provided any other premises only in the following instances: 1) if the occupant or members of his family systematically destroy or damage the dwelling premises; 2) if the occupant or members of his family make it impossible by their conduct for other occupants to continue joint habitation; 3) if the occupant does not pay rent for three months from the day when it became due.

In practice people are never evicted on the strength of the last clause. Rent is small (usually, from three to five per cent of the monthly wages). When the court hears cases of non-payment of rent it studies the reasons and allows a period to pay off the arrears without resorting to eviction.

The law protects the lessee's right to the premises he occupies. Persons who occupy the dwelling premises of others without authorisation may be evicted by administrative order, without being provided other premises.

Termination of contract of lease of housing by administrative order with eviction of the occupant is permitted only in exceptional cases established by law (from houses threatened with collapse, houses assigned for demolition or reconstruction according to plans for remodelling big towns). In such cases the housing agency provides the evicted persons with other premises of equal quality.

Contract of use of property without charge. Under this type of contract one party (lessor) makes available property for temporary use by another party (lessee) without charge. It is not prescribed by the Civil Code but is very

common in practice. It is very similar to contract of lease of property: its subject-matter is a durable individually defined thing; the use of the property is transferred for a certain period. As its name indicates, the difference is that no charge is made for the use of the property leased.

Agency. By agency contract, one party (agent) undertakes to perform, for the account and in the name of the other party (principal), the acts entrusted to him by the principal (CC 251). Both physical and juridical persons may be parties to a contract of agency.

The subject-matter of an agency contract is commission of juridical acts (conclusion of transactions, conduct of civil proceedings in court, etc.), which are performed by the agent, "for the account and in the name of" the principal. That the agent performs the transaction not for himself but for another person must be known to the other party when the transaction is concluded. In such a transaction the principal acquires the rights and incurs the obligations, the agent being his representative. The activities of the agent are presumed to be gratuitous. The principal must pay compensation to the agent only where such compensation is provided by contract or special tariffs.

Agency contract is based on personal trust of the principal in the agent, and so the principal may cancel the contract at any time. The agent has a similar right, since performance of his duties under the contract postulates willingness on his part to do so. All agreements waiving these rights are invalid.

The agent must perform the acts entrusted to him in strict accordance with the directions of the principal, and deliver to the principal all that he has received by virtue of the agency; the principal must accept whatever was legally performed by the agent in the discharge of the agency, and reimburse the agent for necessary expenses incurred and pay compensation to the agent where such is due.

Contract of commission agency. By contract of commission agency, one person (the commission agent) under-

takes to perform, as authorised by another person (the commission principal), and for payment of a commission, one or several transactions, in his own name but for the account of the commission principal (CC 275 a, 1). Both physical and juridical persons may be parties to a contract of commission agency.

As its definition shows, contract of commission agency is akin to contract of agency. In both cases the subject-matter of the contract is performance by one person of certain juridical acts entrusted to him by another person. But under contract of agency, the agent performs in the name of the principal, whereas the commission agent performs in his own name, and not in the name of the commission principal, although for the latter's account. Contract of agency may or may not provide for compensation. Contract of commission agency always provides for the payment of a commission. The Civil Code lists the juridical acts which may be the subject-matter of contract of commission agency, namely, transactions not prohibited by law, such as sale, freightage, etc. (CC 275 a, 3).

In his dealings with third parties in his own name, the commission agent acquires all the rights and incurs all the obligations arising from such transactions; no legal relations arise between the third party and the commission principal from a transaction concluded by the commission agent. But because it is concluded by authorisation of the commission principal and for his account, the goods purchased by the commission agent in pursuance of the contract of commission agency are deemed to be the property of the commission principal. All goods delivered to the commission agent for sale are regarded as the property of the commission principal.

Contract of commission agency occurs in relations between socialist organisations. Thus, consumer co-operatives accept on commission agricultural produce from collective farms and their members for sale in their stores. Wholesale agencies of the Ministries of Trade in the Union Republics

accept on commission from retail stores surplus goods for sale to other commercial enterprises. Contract of commission agency is quite extensively used in relations between private persons and socialist organisations (commission stores).

Contract of commission agency is regulated by the civil codes of the Union Republics (CC 275 a-275 z). The general provisions pertaining to contract of commission agency in the Civil Code of the R.S.F.S.R. are applicable to all types of contracts of commission agency. There are also special rules governing some types of contract. Thus, the terms and procedure of acceptance of things by commission stores are defined by the Regulations for Commission Stores approved by the Ministry of Trade of the R.S.F.S.R.

Contract of safe-keeping. Under contract of safe-keeping, one party (keeper) undertakes to keep a thing delivered by another party, and to return it. Like contract of use of property without charge, contract of safe-keeping is not prescribed by the Civil Code, but is very common in practice. It is concluded between socialist organisations mainly in cases when the safe-keeping of things requires special equipment (refrigerators, etc.). It is also concluded between socialist organisations and private persons. Relations under contract of safe-keeping also occur between private persons as a matter of workaday arrangement.

It is the duty of the keeper to keep the things delivered to him. He must take all the necessary measures to prevent their loss or damage. In contracts between private persons the thing is usually kept by the keeper with his own property and is given equal care. He is not liable for accidental loss, but only when the thing is destroyed through his fault (whether due to intent or neglect). When things are stored for safe-keeping by special establishments (such as municipal pawnshops), they are liable also for accidental loss or damage of the thing, and are only released from liability for loss or damage by *vis major*. That is because

safe storage is their chief function, and it is their duty to do everything to ensure it.

The person who has placed a thing for safe-keeping must compensate the keeper for all pertinent expenses. If provided for by the contract, he must also pay a special fee. He must withdraw his thing upon expiry of the term stipulated in the contract. Otherwise the liability of the keeper is greatly reduced, and he is held liable for loss or damage only in the event of design or gross negligence.

Contract of carriage. Under contract of carriage, one party (carrier) undertakes to carry goods, passengers or luggage at his disposal to a definite destination, and the other (consignor or passenger), to pay the fixed rate.

There are necessarily two parties to any contract of carriage: the carrier and the consignor or passenger. In the transportation of goods there is usually another party, namely, the consignee.

In the U.S.S.R., railway, water, air, and automobile transport is state property and operates to fulfil the state plan. In consequence, carriers are mainly state transport establishments (railways, shipping lines, etc.). But co-operative organisations, when allowed by their rules, and collective farms, by decision of general meetings, may also act as carriers.

Contract of carriage includes the transportation of goods, passengers, and luggage.

There is no single law covering all types of carriage. There are special laws, such as the 1954 Railway Statutes; the 1955 Inland Water Transport Statutes of the U.S.S.R.; the 1929 Commercial Shipping Code; and the 1935 Air Code. There are also decisions of the Soviet Government concerning carriage on the various types of transport, and transportation regulations, orders and instructions issued by the transport Ministries and the Central Civil Aviation Administration.

Legal relations in the credit and payment system are based on the state economic plan and are interwoven

with the system of contractual relations between socialist organisations. Under the law the latter may not extend credits to each other; only the State Bank is authorised to extend credits to socialist organisations (except for capital construction). Such credits are known as bank loans. They are granted for a strictly specified purpose (such as the stocking of seasonal raw materials, payment for goods stocked) for a definite period, and must be repaid.

Socialist organisations receiving loans from the State Bank must observe certain rules: they must repay loans in the absence of collateral (when raw materials designated as collateral are used up), repay the loans at the specified periods, and use loans only in conformity with their specified purpose. Violation of credit regulations invites sanctions which are applied by the State Bank. These may include the recovery of loans before they are due, withdrawal of credit facilities, etc.

All payments between economic organisations for goods delivered, services rendered (except capital construction) are made through the State Bank.

Each economic organisation must keep its monetary assets on its checking account at the State Bank. All receipts from other economic organisations and payments to them: wages, payments to financial organs, instalment payments on State Bank loans, etc., must pass through the checking account. The State Bank collects all receipts and makes all disbursements for the economic organisations through their checking account. The owner of the checking account is the economic organisation: disbursements from its checking account require its consent.

Establishments financed from the State Budget, trade-union organisations, and collective farms keep their monetary assets on their current accounts at the State Bank, which may be used to settle accounts (such as payments by collective farms for farming machinery, etc.).

There is a variety of statutory forms of payment used by economic organisations (contractor and buyer; contrac-

tor and customer). Thus, sums are written off from the buyer's account in accordance with bills accepted, letters of credit, drafts, cheques, etc. The law establishes the sphere in which each form of payment is used, leaving it to the socialist organisations to select the most suitable one for each concrete case arising from contract.

Insurance. By contract of insurance, one party (the insured) undertakes to make a stipulated payment (insurance premium), and the other party (the insurer) undertakes, in the case of the happening of the event provided for in the contract (the insurable event), to compensate the insured or a third party (the beneficiary); in the case of property insurance, by reimbursement for damages sustained within the limits of the amount established by the contract (insurance amount); and in the case of life insurance, by payment to him of the sum of the insurance (CC 367). The Civil Code deals with *voluntary insurance*, which arises from contract. But in the U.S.S.R. there is very wide use of *mandatory insurance*, which arises from law.

Insurance is designed to make good losses in property due to natural disasters and other accidents (fires, floods, etc.). It is also a means of providing for citizens and members of their families and relatives in the event of death or disability. State property is not insured within the territory of the U.S.S.R.: losses inflicted on state property by natural disasters or other accidents are covered according to plan from a reserve fund in the State Budget.

In the U.S.S.R. the insurance business is a state monopoly: it is carried on by the state itself through its insurance agencies in the Union Republics.

Export and import cargoes, sea-going vessels, and Soviet property abroad are insured by the Foreign Insurance Agency of the U.S.S.R.

Depending on the subject-matter, a distinction is drawn between property insurance and personal insurance. Method gives rise to mandatory and contractual insurance. There are always two parties to an insurance legal rela-

tion: the insurer and the insured. The State Insurance Office is the insurer, and the insured is the person entering the legal relation with it on the basis of law or contract; the insured may be a collective farm whose structures are subject to mandatory assessed insurance, or a private person who takes out an accident insurance policy, etc.

An insurance policy may provide for the insurance amount to be payable to a third person who does not take part in concluding the contract of insurance, for example, the wife, who is appointed by the husband as the beneficiary under a policy against the risk of death (CC 367).

The insurance contract must be made in writing (CC 379).

The State Insurance Office issues the insured an appropriate document: an insurance certificate, insurance receipt, or policy, which are of equal legal force.

In property insurance, the insurer is relieved from payment of the insurance sum if the insurable event happens due to intent or gross negligence of the insured or of the beneficiary (CC 393). In property insurance, when the insurable event happens through the fault of a third person (as when an insured dwelling-house burns down due to gross negligence on the part of the tenant) the insurer who has paid the insurance amount for the lost property acquires, within the limits of this amount, all claims which the insured has against the third party through whose fault the insurable event happened. If the damage is not fully covered by the insurance compensation, the owner of the insured property has the right to claim the difference from the person guilty of causing the damage.

In personal insurance, the insurer pays the insurance amount regardless of whether or not damage results from the insurable event. The insured, having received from the insurer the sum specified in the insurance policy, retains the right to claim compensation from the third party if the insurable event occurred through his fault. As a conse-

quence, the insurer does not acquire the right to claim from the third party the reimbursement of the amount he has paid to the insured.

When the insurable event occurs the insured must give the earliest possible notice of it to the insurer. In property insurance, the insured must prove the happening of the insurable event and the extent of the loss incurred. In personal insurance, because the insurance amount is paid regardless of the loss, the insured (or the beneficiary, as in insurance against the risk of death) must merely establish that the insurable event has occurred.

There are many types of insurance in the U.S.S.R. All collective-farm property, with very few exceptions, is covered by mandatory assessed insurance. It is insured against fire, lightning, flood, and certain other natural disasters. Mandatory assessed insurance also covers certain types of property belonging to private persons (such as dwelling-houses). The insurance amount is statutory and may not be altered by agreement of the parties.

Voluntary property insurance applies to crops, farm animals, means of conveyance, furnishings, etc.

Voluntary personal insurance includes mixed life insurance (against the risk of death, loss of ability to work), accident insurance, etc.

6. OBLIGATIONS ARISING FROM INJURY CAUSED TO ANOTHER AND UNJUST ENRICHMENT

Obligations arising from injury caused to another. Anyone causing injury to the person or property of another must repair the injury caused (CC 403). Hence, infliction of injury is ground from which an obligation arises.

Civil liability for injury caused to another may arise parallel to criminal responsibility involving punishment of the guilty person (as in the stealing of property, infliction

of bodily injury, causing loss or reduction of capacity to work on the part of the victim). But liability to repair the injury caused may arise regardless of the *corpus delicti*.

The following are grounds for civil liability for injury caused to another: 1) the existence of injury inflicted on the person or property of another; 2) unlawful nature of the act causing injury; 3) the existence of causality between the unlawful act and its injurious effects; 4) the existence of guilt on the part of the person causing the injury.

Injury caused to the person of another is regarded by the law as death or impairment of health accompanied by loss or diminution of the earnings of the victim or material injury to his dependents.

Injury inflicted on property assessed in terms of money is known as loss which may consist of a reduction of the injured person's property (damage to a thing of another) or of loss of benefits, that is, the loss of a sum which the injured could have received but for the injurious act. Compensation must be paid only for loss of property. Incorporeal losses are not restored in money, provided, however, the unlawful act did not also cause loss of property (as the mutilation of a person reducing his capacity for work and cutting his wages).

Unlawful acts violate the law and rights protected by law belonging to a given person. Injury may be caused not only by an act but also by an omission. No one is liable for injury caused to another by acts within the limits of his rights.

Liability for injury to another arises when there is causality between the wrongful act and its injurious effect; it must be established that injury was caused by the wrongful act or omission in question.

Liability for injury to another arises only when there is guilt on the part of the person causing the injury, who is liable both for a wilful act and for negligence causing injury. As a general rule, injury caused without guilt does

not entail liability. Nor is a person liable if he proves that the injury was caused by intent or gross negligence on the part of the injured person. The burden of proof does not fall on the injured person. Under Article 403 of the Civil Code the person causing the injury is presumed guilty, and is absolved from liability if he proves that he is not guilty.

In the existence of grounds there arises the obligation to repair the injury caused. Reparation of injury consists in restoration of the condition existing before injury: a damaged thing must be repaired, a destroyed thing must be replaced, etc. To the extent to which such restoration is impossible, the person guilty of inflicting the injury must pay a proper sum in compensation for the damage caused (CC 410).

Persons who jointly cause an injury are held liable jointly and severally to the injured person.

The law makes an exception from the general rule of responsibility for guilty infliction of injury in cases when such injury is caused by individuals and enterprises whose activities involve increased hazard for persons coming into contact with them, such as railways and industrial plants (CC 404). The only circumstances relieving from liability in such cases are 1) *vis major*, and 2) intent or gross negligence of the person injured. Liability falls on the owner of the source of increased hazard, and not on the person who has actually inflicted the injury (not the driver of an automobile, but its owner).

Persons legally incapable are not liable for injury caused by them. These include minors under the age of 14, the mentally ill and weak-minded. Liability falls on the persons whose duty it is to care for them (CC 405). For injuries caused by minors who have reached the age of 14, their parents and guardians are also liable as well as the minors (CC 9 and 405).

Juridical persons are liable for injury caused by their agencies (director, chairman of the board, etc.), members (in co-operative or mass organisations), and workers. The

juridical person is deemed liable when 1) the said persons are guilty, and 2) when the injury is caused by their acts in line of duty.

The law makes special provisions for cases when injury is caused to the person of another, i.e., when the injury results in death or impairment of health. In the event that death is caused by an injury, the right to compensation belongs to the persons who had been supported by the deceased and who have no other means of livelihood (CC 409). These persons include minors below the age of 16 and school children below the age of 18; adult dependents incapable of working until their capacity for work is restored; and dependents who have attained pension age (55 years for women and 60 for men). The compensation to dependents of the injured person is awarded in the form of regular payments at the same intervals as those set for social insurance pensions.

Compensation to the dependents of the injured person is fixed with an eye to his earnings and the number of persons supported by him, less his personal expenses. When a social insurance pension is awarded to dependents in the event of the death of their bread-winner, it is counted as a part of the payments awarded to them from the person who inflicted the injury.

In the event of injury to health, the right to compensation belongs to the injured person himself.

Persons insured under social insurance in the event of bodily injuries obtain satisfaction from the social insurance agencies (CC 412). But the injured person has the right to additional compensation only if the injury is not fully covered by the sum awarded to him by the social insurance agency in the form of a benefit or pension. However, the enterprise with which the injured person has labour relations and which pays the insurance premium is liable for the injury caused only when such injury has been inflicted by the criminal acts or omissions of the management, i.e., through its fault (CC 413). The social insurance

agency which satisfied the injured person (by a benefit or pension) then has the right of subrogation against the enterprise to the extent of the compensation paid to the injured person.

Where the person who caused the injury has not insured the injured party, the latter, insofar as he has not received full reparation for the injury under social insurance, has the right to claim additional compensation from the person who caused it (CC 414).

If the injured person is not a factory or office worker and is therefore uninsured (as a housewife), he is treated, in the matter of compensation, equally with the statutory category of workers or clerical employees. The court also decides on compensation of the injury (CC 415).

The extent of these damages due to loss of earnings is determined in accordance with the degree of incapacitation for work of the injured person and his average earnings over a period of 12 calendar months preceding the accident, and two calendar months in the event of temporary disability. The court must take account of the pension or benefit granted to the injured person and deduct it from the compensation paid to the injured person.

If as a result of bodily injuries the injured person, on the expert opinion of a medical board, requires constant care, the court may bind the person who caused the injury to pay the cost of such care, over and above the compensation for loss in earnings. The court may also bind the person who caused the injury to pay the costs of special treatment, prosthetic appliances and special diet, unless the injured person receives these free of charge.

Obligations arising from unjust enrichment. Whoever has been enriched at the expense of another, without sufficient ground provided by law or contract, must restitute that which he has groundlessly received (CC 399). Here enrichment is taken to mean the receipt of property or accumulation of property by one person at the expense of another without sufficient ground thereto. Restitution must

be made to the person at whose expense unjustified enrichment was effected.

Whoever has been unjustly enriched by reason of another's act which is either contrary to law or is directed to the prejudice of the state must surrender to the state whatever he has unjustly received (CC 402).

7. COPYRIGHT LAW

Copyright law regulates relations arising from the production and use of works of literature, science, and the arts. The basic purpose of Soviet copyright law is to safeguard the corporeal and incorporeal interests of authors, thereby stimulating their creativity, and to give the widest circulation to works promoting the development of the multinational socialist culture. The author has the exclusive right to publish, reproduce and circulate his work by any lawful means, but in some instances the author's work may be used without his consent in the interests of society. Thus, translations are made without the author's sanction.

The most important enactment regulating relations in the production of works of literature, science, and the arts is the all-Union law, the "Basic Principles of Copyright" (BPC), approved by the U.S.S.R. Central Executive Committee and the Council of People's Commissars on May 16, 1928. It has served as a basis for copyright laws in the Union Republics, including the R.S.F.S.R. Copyright Law of October 8, 1928, the Ukrainian S.S.R. Law of February 6, 1929, and the Byelorussian S.S.R. Law of January 14, 1929, etc. Other important enactments include decisions of the Government of the U.S.S.R. and the Governments of the Union Republics on copyright, the various departmental instructions and circulars, standard contracts (of publication, production and script).

Subjects of copyright are persons who have produced the work in question (writer, composer, etc.).

An author who is a Soviet citizen is recognised as a subject of copyright regardless of whether his work has been published or is in the form of a manuscript, sketch or in any other presentable form on the territory of the U.S.S.R. or on the territory of a foreign state. But if the work has been published or is in the form of a manuscript, sketch or any other presentable form on the territory of a foreign state, the author's successors, with the exception of heirs, do not enjoy the protection of copyright on the territory of the U.S.S.R. A foreign author is recognised as a subject of copyright if his work has been published or is in the form of a manuscript, sketch or in any other presentable form on the territory of the U.S.S.R.; in such cases, his successors in law are also recognised as subjects of copyright. Under Soviet law, copyright of foreign authors whose works have been published abroad or are located abroad in the form of a manuscript, sketch or in any other presentable form is recognised only if the U.S.S.R. has a special agreement to this effect with the country concerned, and only within the limits of such agreement (BPC 1, 2, 3). The U.S.S.R. has not had such agreements with foreign countries.

Copyright in one work may belong to two or more persons, as co-authors. Under current laws there are two forms of co-authorship. A work produced by two or more authors constitutes an indivisible unit consisting of parts without independent scientific, literary or artistic value, and the co-authors have copyright in the work as a whole, and not in any single part of the collective work. In the second case the co-authors are subjects of copyright in respect of a collective work as a whole, and at the same time each is a subject of copyright in respect of the part of the work he has produced (as when a composer writes the music, and a poet, the lyrics of a ballad).

The object of copyright is the product of the author's creativity expressed in a concrete form. Objects of copyright include oral works (speeches, reports, lectures, etc.),

written works (books, articles, etc.), dramatic works (plays), musical works (operas, symphonies), motion-picture scripts, paintings, sculptures, architectural works, etc.

Copyright springs from the creation of the work: no formal acts are required for recognition of copyright (with the exception of photographic works). Writers, composers, sculptors acquire copyright in their work from the moment it is produced.

The author enjoys copyright in his work during his lifetime. Only for certain works (choreographic works, motion-picture scripts and some others) copyright is limited to five or ten years. When the author dies, the copyright passes to his heirs or testamentary beneficiaries for 15 years, from January 1 of the year of the death of the author. When copyright is limited by a special term, it passes to the author's heirs only for the remainder of the established period still running on the day of the author's death.

With the creation of his work the author acquires certain corporeal and personal rights. His corporeal rights include the right to reproduce and circulate his work, and the right to derive income from his work. As a rule, reproduction and circulation take the form of the publication or public performance of a work. Income from his work takes the form of author's royalties. In most cases the rates are statutory. Sometimes the author is paid wages instead of royalties (as staff writers of newspapers, staff painters at textile mills).

Among the author's personal rights are the right to demand that the work be published under his name and the right to prohibit other persons to call themselves authors of his work. Another personal right is inviolability of the work: no one is entitled to make any additions or changes in the work without the author's consent. Only the author has the right to decide whether his work is ready for publication or public performance. The author's right to

publication and distribution is effected through socialist organisations.

Copyright law provides for only two types of contracts: 1) publishing contract, and 2) production contract.

A *publishing contract* is defined as a contract by virtue of which the author assigns for a definite period of time the exclusive right of publication of a work, and by which the publisher undertakes the obligation to publish such work and to take all the necessary steps within his power for its distribution. A publishing contract may be made for an existing work, and for a work which has not yet been produced (literary order). Under R.S.F.S.R. law a publishing contract may be made for a period of time not exceeding four years (in other Union Republics the time limit is different). The publishing contract is ordinarily done in writing. It must define the nature of the work to be published, date of publication, the printing, the amount of royalties, etc. If publication is not effected within the period of time established by contract, the contract may be rescinded upon the unilateral declaration of the author; the publishing house must thereupon return the manuscript to the author and pay him royalties in full.

A *production contract* is defined as a contract by virtue of which the author assigns the right of public performance of his work, and the producer (theatrical enterprise) undertakes to give a public performance of the work within a definite period of time. Production contracts may be concluded only in respect of a work not yet made public. It may also be concluded in respect of a work in presentable form, as well as of a work not yet rendered in presentable form (dramatic order). In the latter case the author undertakes the obligation of writing the play. Production contracts must be done in writing. Under R.S.F.S.R. law, production contracts may be signed for a period not exceeding three years. The theatrical enterprise is obligated to present the production within two years for musico-dramatic and choreographic works, and one year for all other

works. If production and public performance are not effected within the period of time stipulated in the contract, the production contract may be rescinded upon the declaration of the author, and the theatrical enterprise is under obligation to pay the author the stipulated royalties.

In practice there are several other types of copyright contracts, including the very common motion-picture script contract, which defines the legal relations of the author of the script and the film studio.

Published dramatic, musical, musico-dramatic and choreographic works may be given public performance without the author's consent, but with payment of remuneration to the author. In such cases copyright is realised without the conclusion of contract.

Copyright law contains the proviso that any work of special import to socialist society may be compulsorily purchased by the state, with an appropriate payment of royalties to the author or his successors.

The law provides all-round protection of copyright against infringements, which may take the form of a person presenting another's work as his own, reproducing and distributing a work without the author's consent, etc. The author has the right to sue for the recovery of damages, removal of distortions in the text or name of the author, etc. Grave infringements of copyright law entail criminal responsibility.

8. PATENT LAW

Patent law regulates relations arising from inventions and new technical ideas.

General guidance in the development of inventions and improvement proposals is assigned to the Committee for Inventions and Discoveries under the Council of Ministers of the U.S.S.R., which collaborates with the All-Union Society of Inventors and Innovators.

The chief normative act is the Ordinance on Discoveries,

Inventions and Efficiency Proposals approved by the Council of Ministers of the U.S.S.R. on April 24, 1959. Of substantial importance are also the instructions On Remuneration for Discoveries, Inventions and Efficiency Proposals adopted by the Council of Ministers of the U.S.S.R. on April 24, 1959.

New ideas include: 1) inventions and 2) efficiency proposals.

An *invention* is deemed to be an essentially novel solution of a technical problem in any sphere of the national economy, culture, public health or defence, producing a positive effect. For an idea to be recognised as an invention, the inventor must create something not previously known in world technology; in other words, the idea must have the mark of essential novelty. The positive effect is the concrete benefit that the national economy may derive from the invention.

An *efficiency proposal* is one improving existing technology (machinery, instruments, tools, etc.), goods, technological processes, controls, supervision and research methods, safety measures and labour protection, or yielding higher productivity of labour, greater efficiency in the use of power equipment and materials.

Subjects of patent right are ordinarily private persons who bring forward inventions or efficiency proposals. There is co-authorship when an invention or efficiency proposal is worked out jointly by two or more persons. Persons giving the inventor or innovator technical assistance only are not recognised as co-authors.

An organisation may also be a subject of patent right, as when an invention is the fruit of collective labour and individual authorship cannot be determined. The organisation in which the invention was developed (institute, enterprise, etc.) is then recognised as the subject of patent right.

Under the 1959 Ordinance aliens enjoy equal rights with Soviet citizens on a basis of reciprocity.

To secure his right to an invention, the inventor must obtain a special document: 1) certificate of authorship, or 2) patent. Option rests with the inventor.

No certificates or patents are issued for substances obtained chemically; they are issued for new methods of producing such substances. Only certificates of authorship are issued for medical, tasty, and food substances obtained by non-chemical processes; patents may be issued only for methods of their preparation. Certificates of authorship are issued for methods of treating diseases, tested and approved by the proper authorities. Certificates of authorship and breeder's certificates are issued by the Ministry of Agriculture of the U.S.S.R. to breeding stations for new sorts of seeds and breeds of farm animals and poultry, races of silkworm and varieties of crops.

When a certificate of authorship is issued, the right to use the invention belongs to the Government without any contract with the inventor, and the Government sees to it that the invention is used. Inventions are realised through state, co-operative and mass organisations and their enterprises.

Certificate of authorship secures the inventor's corporeal and personal rights. His corporeal rights include the right to remuneration for realised inventions. The amount is, as a rule, determined from a fixed scale of rates, depending on the annual saving from the invention. His personal rights include the right to authorship; he has the right to have his name inscribed in the certificate of authorship. To enhance the protection of the inventor's rights, the law also entitles him to demand that the invention be given his name or any other special name. He may participate in realising his invention, and it is his duty to co-operate actively in realising his invention (especially making available the material at his disposal, giving the necessary elucidations and advice). There is no time limit to the issue of certificate of authorship.

The patent gives the inventor exclusive rights to his invention: no one may use the invention without his consent. Under a special contract (*licence*) the patent owner may, for a certain remuneration, allow another person to use his invention or convey all rights to another person. If the invention is of special importance to the state, but no agreement is reached with the patent owner conceding his patent rights, the Council of Ministers of the U.S.S.R. gives the agency concerned permission to use the invention and determines the amount of remuneration to the patent owner.

Patents are issued for 15 years. Failure to pay dues for a patent issued discontinues the effect of the patent.

The patent owner's right is limited by the so-called right of prior use. Enterprises (organisations) using an invention within the confines of the U.S.S.R. prior to the filing of the patent and independently of the inventor, or making all necessary preparations for such use, retain the right of further use of this invention free of charge.

The right to obtain a certificate of authorship or a patent, and also the right to remuneration for the invention, descend by inheritance in the manner established by law.

Soviet inventors usually apply for certificates of authorship, while patents are issued to aliens.

Applications for the issuance of certificates of authorship or patents are filed with the Committee for Inventions and Discoveries under the Council of Ministers of the U.S.S.R. by the inventor personally, his successors, or organisation authorised by the inventor. If the application contains all the requisite data, it is accepted for examination, and the applicant is given a receipt of acceptance. This ensures priority in the event of another person filing application for a similar invention. The invention is then tested for novelty and usefulness.

Novelty tests must be based on previously issued certificates of authorship, Soviet, pre-Soviet and foreign patents,

previously filed applications, relevant publications at home and abroad, published reports of research institutes, design and construction bureaus, papers accepted for contests, theses, and information concerning the use of inventions. The following circumstances are not considered as detracting from the novelty of an invention: 1) when application is filed not later than four months from the day of signing of the report on the start of realisation; or publication of information in the press or official documents; or approval of the author's report on research, his project, paper or thesis, describing the invention; or approval of the results of a contest in which the invention appeared; and 2) when pertinent information is published in the press or when the invention is realised by some enterprise (organisation) without the author's knowledge not more than a year prior to his application.

Usefulness includes not only the expediency of immediate use in the national economy, but also potential usefulness in appropriate conditions.

Efficiency proposals are recognised as such by the organisations within whose scope of activities they fall. Essential novelty, the *sine qua non* of inventions, is not a requisite of efficiency proposals. Appropriate certificates are issued to the authors of applied proposals, which are used in the same manner as inventions.

Remuneration to authors of efficiency proposals is paid according to a scale of rates which differs from that used for inventions, but it also depends on the annual savings yielded by the proposal.

Remuneration is paid regardless of whether the inventions and efficiency proposals are worked out in the field in which their authors work. Disputes involving the rights of inventors are settled by administrative order or in court of law. Disputes concerning the novelty of an invention are settled by administrative order. Disputes concerning authorship (in particular, claims in a dispute over authorship) are settled in court of law.

9. PROTECTION OF INTERESTS OF PERSONS MAKING DISCOVERIES

There is a special system of legal protection for persons making scientific discoveries. The above-mentioned Ordinance on Discoveries, Inventions and Efficiency Proposals and the instructions On Remuneration for Discoveries, Inventions and Efficiency Proposals are the principal normative acts regulating relations arising from discoveries.

The state system of verification and registration of discoveries is designed to establish the authorship and scientific priority of persons claiming recognition as authors of scientific discoveries. It also secures priority to a given discovery for the state, an important factor in the Soviet Union's competition with other countries in the field of science. The responsible agency is the Committee for Inventions and Discoveries under the U.S.S.R. Council of Ministers.

According to Article 2 of the Ordinance on Discoveries, Inventions and Efficiency Proposals, an invention is the establishment of hitherto unknown objective laws, properties, and phenomena of the material world.

If a scientific achievement satisfies these qualifications its author has the right to file an application for a diploma with the Committee for Inventions and Discoveries under the Council of Ministers of the U.S.S.R.

Under the Ordinance, aliens making discoveries, like the authors of inventions and efficiency proposals, enjoy equal rights with citizens of the U.S.S.R. on a basis of reciprocity.

No diplomas are issued for geographical, archaeological, palaeontological or mineralogical discoveries, or discoveries in the social sciences.

Applications for diplomas filed with the Committee are subjected to an expert novelty test. A scientific discovery must be essentially novel, that is, it must be a decisive advance over the world scientific level.

In the event of a positive finding by the experts, the Committee, in co-ordination with the author, approves the formula of the discovery, giving a clear, concise and full expression of its substance, sets the date of priority, registers the discovery and inserts notice thereof in the Bulletin of the Committee and the pertinent journal of the Academy of Sciences of the U.S.S.R. In contrast to inventions, in which priority is determined by the date on which application is filed, priority in discoveries is determined by the date on which they are made.

If the Committee's decision is not protested within a specified period (one year from the date of notification of registry) by private persons or organisations claiming that the discovery is not new or that its author is another person, a diploma is issued to the author.

It does not give him exclusive rights: he is not entitled to prevent other persons from using the discovery for further experiments and as a basis for new discoveries. But its legal effects for the author are nevertheless profound: he obtains official confirmation of his right to authorship and priority. It entitles him to a lump sum not exceeding 5,000 rubles, which is paid out by the Committee; this is designed to stimulate the author's creativity, and is not connected with the practical application of his discovery.

10. INHERITANCE LAW

The right of citizens to inherit personal property is protected by law. It is a constitutional principle (C USSR 10). The basic provisions governing the right of inheritance are contained in the civil codes of the Union Republics.

Inheritance is the transmission of the estate of a decedent to another person or persons in the order established by the law. The legacy is otherwise known as the inheritance mass.

The estate is transmitted from the decedent to his heirs-at-law as a single whole and simultaneously in all parts. If it devolves upon several heirs, it is divided in definite shares per capita among the persons upon whom the inheritance devolves (one-half, one-third, etc.).

Soviet law recognises inheritance by operation of law and under a will (CC 416).

Where inheritance is by operation of law, the estate devolves upon persons specified by the law as heirs. Under a will it devolves upon persons whom the testator has named as his successors.

Inheritance by operation of law occurs in the following instances: 1) a person dies intestate; 2) a will bequeaths only a part of the estate; in that case the unbequeathed part of the estate devolves upon the heirs-at-law; 3) the testamentary heir dies before the testator; 4) the testamentary heir does not accept the inheritance; 5) the will is invalid.

The date and place of opening of succession are legally important.

The date of the death of the testator is deemed the date of opening of succession. An extract from the records of the Civil Registry Office is deemed proof of the decedent's death. In the event succession is opened to a missing person declared dead, the date of issue of the relevant certificate by the notarial office, or the date of entry into force of a court finding declaring the person dead, is deemed the date of opening.

The place of the last permanent domicile of the testator is deemed the place of opening of succession, and if that is unknown, then the place where his estate is located. The succession to a person who dies outside the U.S.S.R. and has no permanent domicile within the U.S.S.R., is deemed opened at the place where his estate is located within the U.S.S.R.

Successors are not notified by publication, but the notarial office advises absent successors whose addresses are

known. The notarial office at the place where succession opens takes measures to protect the estate if such office deems it justifiable in the interest of the state or of the successors.

Heirs-at-law take in order of priority: the first group consists of the children and adopted children of the decedent; his surviving spouse; his parents who are unable to work and other disabled persons who had been dependent upon the decedent for not less than one year before his death; the second group includes the able-bodied parents of the testator; and the third, the brothers and sisters of the testator (CC 418).

Heirs of the second and third groups do not take in the presence of any heir of the first group. Heirs of the second group take in the absence of the heirs of the first group, or in case of their refusal to accept the inheritance. Heirs of the third group take in the absence of heirs of the first and second groups. In case all heirs fail to appear, the estate is deemed in escheat and passes to the ownership of the state.

Where inheritance is by operation of law, grandchildren and great-grandchildren of the decedent take only when their parents have died before the opening of succession. This rule is limited to his issue and the offspring of the decedent's adopted children, and does not extend to his other relatives or persons who had been dependent upon him.

Within each group, the estate is divided in equal shares among the heirs-at-law, with male and female heirs enjoying equal rights. In accordance with the provisions of family law the surviving spouse has the right to a share (usually one-half) of the estate earned in marriage with the decedent, plus an equal share with other heirs of the rest of the estate passing in succession. The grandchildren and great-grandchildren of the decedent upon whom the succession devolves share equally the part of the estate which would have belonged to their deceased parent.

Every citizen may make a disposition of his property to take effect after his death. The disposition of an estate by a citizen, to take effect after his death, is called a will. The person making such a disposition is called the testator.

A testament requires the personal expression of the will of the testator and may not be performed by proxy, through attorneys or guardians.

Every citizen may bequeath all his property or a part thereof to one or several persons from among his heirs-at-law, i.e., children, grandchildren, great-grandchildren, his adopted children and their offspring, his surviving spouse, parents, brothers and sisters, and persons who had been dependent upon him for not less than one year before his death. In willing his estate to any of the above-mentioned heirs, the testator is not limited either by the order of succession by operation of law or by the order of the groups. He has the right to bequeath his property to his sister even when he is survived by able-bodied children (first group) or able-bodied parents (second group). He may bequeath his property to a grandchild, bypassing his son and daughter, etc.

Every citizen has the right to bequeath his property to the state, state agencies or mass organisations. The testator has the right to specify the precise purpose for which the testamentary estate must be used (CC 423).

In the event the testator does not have any heirs-at-law of all three groups, the property may be bequeathed to any physical person, even if not a relative of the testator. The absence of heirs by operation of law is established not at the moment the will is certified, but at the opening of succession.

The testator has the right to substitution, i.e., he may appoint an alternate successor. This is done in case the beneficiary dies before the opening of succession or refuses to accept it.

As in appointment so in substitution the testator has the right of option only from among his heirs-at-law. Substi-

tution by a person who is not a legal heir is allowed, with observance of the same conditions as in appointment of a successor who is not such by operation of law (see above).

In his will the testator has the right to disinherit one, several or all his heirs-at-law. But there is a vital statutory exception with respect to his minor children and other heirs who are unable to earn. The testator may not deprive them of the portion which would belong to them under intestate succession (CC 422). The part of the will whereby the testator deprives the said persons of their portion is invalid. Each of such necessary heirs will have to receive the portion of the testamentary estate which would be his under intestate succession.

The testator may impose upon any of his heirs receiving property under a will the performance of any obligation on behalf of one or several persons. Such an obligation may not be imposed on successors who are not testamentary beneficiaries. Those on behalf of whom the obligation is made may be persons who, while being heirs by operation of law, are not testamentary beneficiaries. The performance of an obligation may be imposed on behalf of any person only when the testamentary beneficiary is not an heir by operation of law.

The will must be made in writing and notarially certified (CC 425).

The legality of the testator's disposition must be verified by a notary public, who may refuse to certify the will if he discovers that it is illegal.

Wills may also be certified by consuls, captains of sea-going vessels and river boats. Commanders of military units may certify the wills of men in their units, and the heads of hospitals may certify those of servicemen undergoing treatment therein.

The testator may amend or revoke his will at any time.

Heirs take only by consent, known as *acceptance of inheritance*. In this connection the Civil Code classifies them as heirs present and heirs absent (CC 429 and 430).

If an heir present at the place of opening of succession fails, within three months from the date of opening, to inform the proper notarial office of his refusal to accept, he is deemed to have accepted the inheritance. Consequently, inheritance is presumed accepted in respect of heirs present. In respect of heirs absent there is no such presumption. The law requires heirs absent to declare their acceptance of the estate in person or by attorney within six months from the date of opening of succession.

Acceptance of the inheritance may be expressed in the following ways: 1) commission of concrete acts testifying to definite intention on the part of the heir to accept the estate (for example, assumption of management of the property), and 2) notification by the heir of the notary public of his acceptance of the estate.

The following are considered as times of acceptance:

a) for heirs who have actually assumed management or possession of the inherited property, the date of assumption of management or possession of the property;

b) for heirs who are present at the place of opening of succession, but who have not assumed management or possession of the inherited property, a date three months from the opening of succession, within which period refusal to accept may have been declared;

c) for heirs absent from the place of opening of succession, who have not assumed management or possession of the inherited property, the date on which they file an application with the notary public at the place of the opening of succession concerning their acceptance, provided such application is to hand not later than six months from the date of the opening of succession.

An heir may refuse to accept the inheritance by filing an application with a notary public to that effect.

Refusal to accept an inheritance entails the following consequences:

a) if the testator has appointed a substitute to take in the event of the heir's death before opening of succession

or non-acceptance of the inheritance, the substitute takes the share of the heir who refuses to accept.

b) if no substitution is made by the testator the share of the heir who refuses to accept passes to the other heirs by operation of law (by right of accretion); if the text of the will makes clear that the testator intended to bequeath all his property to his testamentary beneficiaries, the share of the heir who refuses to accept passes to the other testamentary beneficiaries (CC 433). There are similar consequences in the event of non-acceptance of inheritance by an heir (without a formal refusal).

If a testamentary beneficiary dies after opening of succession without having accepted it, his right of acceptance is transmitted to his own heirs, who may exercise the right in the period of time remaining for acceptance of the inheritance.

Heirs who accept the inheritance are liable for debts burdening the estate only within the limits of the actual value of the estate.

An estate is in escheat and passes to the ownership of the state when: a) all the heirs fail to appear within the specified period (six months from the date of opening of succession); b) when the heirs refuse to take; and c) when the testator has disinherited all his heirs. The notarial office, at the request of the appropriate financial agency, then issues a certificate attesting that the estate is in escheat. Such a certificate is issued six months after the date of opening of succession. The estate escheats on the date succession opens.

An estate in escheat which passes to the state is assigned to pertinent state agencies, co-operatives and other organisations.

Heirs by operation of law or will may obtain from the local notarial office a certificate attesting their right to succession, but this is not compulsory, with the exception of some cases, as in the transmission by succession of the right of ownership in a dwelling-house.

11. STATUTE OF LIMITATIONS

Civil rights may be enforced through the court, but only within a specified period of time. Failure to file suit within that period deprives a person of the right to have this power enforced. The court must docket the case even when the period of limitation has run out, but having established that the time limit has expired, it may refuse to satisfy the claim.

Lapse of time is no bar to action for recovery of state property: socialist state agencies have the right and are duty bound to sue for return of property belonging to the state by co-operatives and mass organisations and citizens, regardless of lapse of time. The same rule applies to the state's right to levy taxes, and certain other cases.

The *period of limitation* depends on the nature of the legal relations of their subjects. Thus, in relations between socialist organisations and citizens, as well as between citizens, the period of limitation is established at three years, and 18 months in relations between socialist organisations. Special periods of limitation are established for certain types of legal relations. As a rule, they are shorter: for claims arising from delivery of goods of improper quality, the period is six months; for claims for the enforcement of contractual fines, forfeits, and penalties, the period is also six months (CC 44).

The statute of limitations may not be altered (prolonged or reduced) by agreement of the parties.

The running of the period of limitation commences with the accrual of the right to sue (CC 45). If the claim rests on an obligation subject to performance at a date specified by the parties, the right to sue arises with the arrival of that date. If the date of performance of the obligation is not fixed by the parties, the right to sue arises with the given obligation. The right of an owner to sue accrues from the moment his right of ownership is invaded. In some cases the law is explicit: in disputes between state

enterprises and establishments, collective farms, co-operatives and mass organisations arising from delivery of goods of improper quality, the running of the period of limitation commences from the date of the making of an instrument testifying to the improper quality of the goods (CC 45).

The court applies the statute of limitations on its own initiative, even when the party concerned does not enter a plea to that effect, and rejects the claim for lapse of time.

But if the court finds that the delay in bringing an action before the expiration of the period of limitation was caused by sound reasons, it may extend such period (CC 49).

The running of the period of limitation may be suspended by reason of circumstances specified in the law. In that case, the period of time from the moment the given circumstance arose until its termination is excluded from the period of limitation, and as a consequence the date of expiry of the period of limitation is moved up. A period of limitation is suspended when the plaintiff is prevented from bringing action by *vis major*, provided such obstacle occurred during the last six months of the period of limitation. *Vis major* is taken to mean some extraordinary occurrence such as flood, earthquake, etc., which, under the circumstances, could not be averted. For the personnel of the Soviet Army called to the colours for war duty, the running of the period of limitation is suspended for the duration of the war emergency (CC 48).

There is a distinction between suspension and interruption. After interruption, a fresh period of limitation begins to run. The running of the period of limitation is interrupted by bringing an action. In disputes in which one of the parties is a private person, the period of limitation is likewise interrupted by any act of the debtor (defendant) evidencing acknowledgement of the debt (promise to perform the obligation, request for a moratorium on the obligation, etc.). In relations between socialist organisations

acknowledgement of the debt by one of the parties does not interrupt the running of the period of limitation. This rule is designed to impel socialist organisations to observe financial rules and prevent bypassing the law which prohibits socialist organisations to extend credit to each other. In the settlement of accounts of state enterprises with each other and with co-operative and mass organisations, the debtor, whether a state, co-operative or mass organisation, must pay into the State Budget the sum of the debt for whose reclamation the period of limitation has run out.

Chapter Five

LABOUR LAW

1. CONCEPT AND FUNDAMENTALS¹

The principal features of the socialist organisation of labour are laid down in the Constitution of the U.S.S.R. and the Constitutions of the Union Republics (the duty to work; socialist distribution according to labour; the right to work; the right to rest and leisure; the right to material security in old age, disability for work and illness). The concrete forms of the socialist organisation of labour are juridically expressed in two branches of the uniform system of socialist law: the labour of factory, office and professional workers is regulated by Soviet labour law; and that of members of collective farms, by collective-farm law (see Chapter Seven).

Soviet labour law is democratic because trade unions have broad rights in regulating working conditions and exercising control over the observance of labour laws. The methods of legal regulation of social relations used in labour law are characterised by the participation of trade unions in working out and adopting labour normative acts, settling labour disputes, and by trade-union control over the observance of labour laws.

These are the fundamentals of Soviet labour law.

¹ Written by Prof. N. Alexandrov.

Genuine freedom of labour contract is a fundamental of Soviet labour law: any person is free to take a job and to terminate the labour relation at will.

In conformity with the constitutional right of Soviet citizens to work, they are protected against groundless refusal of employment and against unjustified discharge.

Another fundamental of Soviet labour law is the payment of wages guaranteed by the state according to the quantity and quality of the labour expended, with a steady growth in real wages.

In conformity with the right of Soviet citizens to rest and leisure, the length of the working day is limited by statute and is being further steadily reduced.

All workers and other employees are covered by social insurance at the expense of the state, without any deductions from wages.

The law binds state economic organisations and management to settle all matters pertaining to working conditions in co-ordination with the relevant trade-union body.

Administration of state social insurance is in the hands of the trade unions, which also have charge of and direct technical inspection exercising state supervision over labour protection.

Factory trade-union committees settle labour disputes between employees and management. They have the right to make awards which are binding upon management, and which, unless reversed, at the instance of management by an order of the court, are enforced within a specified period.

No one may be discharged by management without the consent of the factory trade-union committee.

Through production conferences set up by trade unions the working people take an active part in the management of industrial enterprises. It is the duty of management regularly to report on the fulfilment of decisions and proposals adopted by the production conferences.

Without co-ordination with the trade-union committee, management has no right to introduce or modify output or piece-rates, or carry out grading of workers or jobs.

These broad trade-union rights are an embodiment of the socialist democracy developing in Soviet society, which has entered the period of full-scale communist construction.

The problem of transition to the communist system of labour is being solved along several interconnected general lines. These are:

One, technical progress in the national economy as a whole;

Two, a radical easing of labour (in particular and especially, shorter working hours) and the further improvement of labour protection on the basis of the complex mechanisation and automation of production;

Three, a gradual obliteration of distinctions between mental and manual labour on the basis of the further rise of the working people's cultural and technical level and even closer integration of education and production;

Four, the further consolidation of socialist labour discipline through greater moral and material incentives, with a steady rise in living standards.

2. COLLECTIVE AGREEMENT

Collective agreements are signed between management of enterprises and factory trade-union committees acting on behalf of the workers. A collective agreement is an aggregate of *bilateral obligations* designed to ensure fulfilment and overfulfilment of the production plan, raise the productivity of labour, improve labour organisation, and enhance the responsibility of economic and trade-union organisations in improving living conditions and cultural services for the workers and other employees of a given enterprise.

Collective agreements are signed at enterprises in industry, transport, construction, communications, public catering, and trade, and also state farms, repair and service stations, etc. A collective agreement covers all workers and other employees at a given enterprise, regardless of membership of the trade union concluding the collective agreement.

Among the provisions incorporated in collective agreements are concrete mutual obligations of the parties, aimed at the fulfilment of the production plan in all its quantitative and qualitative targets; continued raising of the productivity of labour and reduction of production costs on the basis of technical progress; drawing of all workers and technicians into socialist emulation; and ensuring mass participation in economic management.

An important provision in collective agreements is the further improvement of labour protection and safety measures, better medical services, holiday and health-giving facilities for the working people.

Collective agreements contain bilateral obligations on the timely fulfilment of construction plans for housing and cultural facilities and public utilities; extension of educational and cultural work among the working people; training schemes; improvement of public catering; retail trade, etc.

Collective agreements define rates of compensation and wage systems.

An agreement on labour protection and a list of employees with unspecified working hours¹ and duration of additional vacations for them are appended to the collective agreement.

The collective agreement is drafted jointly by the director of the enterprise and the trade-union committee. They

¹ Employees whose occupation does not permit of strictly fixed working hours. Among them are administrative, executive and service personnel, no time record of whose activities can be kept. They are not entitled to overtime pay; they are compensated by higher wages and additional annual vacations up to 12 workdays.—Ed.

take account of the criticism of shortcomings in the fulfilment of the old collective agreement, and also of proposals for the new collective agreement submitted by workers, clerical staff, and technicians.

To take fuller account of the specific production conditions and the interests of collectives, supplementary agreements are concluded in big shops on labour protection, organisational and technical measures, installation of new machinery, and application of progressive technology and production experience.

Differences arising between the director and the trade-union committee in the negotiation of the collective agreement are ironed out jointly by higher trade-union bodies and the relevant economic agencies.

The draft collective agreement together with the amendments and addenda is debated by a general meeting or conference of workers, signed by the director of the enterprise and the chairman of the trade-union committee and submitted for registration. Organs of registry are the higher trade-union bodies, and, depending on the subordination of the enterprise, Economic Councils, Ministries, Departments, and administrations of the Executive Committees of the Soviets of Working People's Deputies.

The object of registration is control over the legality of collective agreements and verification of conformity with the approved state plan of production. If a collective agreement contains provisions contradicting labour laws or does not accord with the approved plan targets, it is registered only after the necessary corrections.

Enterprises are materially liable under collective agreements. All claims of a material nature arising from obligations under a collective agreement are made against the enterprise and satisfied at its expense. Violation by a person in office of obligations assumed by an enterprise under a collective agreement entails disciplinary punishment or criminal responsibility, depending on the nature of the violation.

Trade-union organisations are not materially liable under collective agreements (e.g., LC 20).

Collective agreements are concluded every year.

3. LABOUR CONTRACT

A labour contract is an instrument whereby a worker gives form to his relations with an enterprise or establishment. Hence, for the employee the labour contract is a form of realisation of his right to work.

From the national economic standpoint the labour contract may be described as a form of recruitment of labour.

The significance of the labour contract for both parties to the labour legal relation (the worker, on the one hand, and on the other, the enterprise or establishment) lies in it being the juridical ground producing and sustaining the relation in time, and also a method of regulating working conditions.

The *labour contract* is an *agreement* under which the working man undertakes to perform at the enterprise or establishment a definite type of work, and the enterprise or establishment, to remunerate him for the work performed according to the quantity and quality of the labour expended, in conformity with established standards, and to ensure working conditions stipulated by law. When necessary, the parties may specify details in these statutory conditions and establish additional terms not contradicting the law.

Under Soviet law, it is the general rule that persons employed as factory and office workers must not be below the age of 16. Under permits issued by trade unions, young persons between the age of 15 and 16 may be taken on for individual or group training and subsequent employment at enterprises with a shorter working day and observance of certain other requirements.

Persons who have not attained the age of 18 may be

employed only after a medical inspection, with subsequent medical inspections at least twice a year.

The duties of the parties to a labour contract are determined by legislation, working rules, collective agreement and labour contract.

The primary duty of the enterprise (establishment) is to provide the employee with the work agreed upon: management must employ the worker in question in the speciality and skill specified at the time of employment.

It is also the duty of management to inform the employee of the safety rules and the technical conditions of work; to help him improve his skill by arranging for a training scheme at the expense of the enterprise; to place at his disposal social services; to pay for his work in accordance with existing rates and wage systems.

It is the duty of the employee to perform the work assigned to him honestly and conscientiously; to take good care of equipment, tools, workaday stock and protective outer garments; strictly to observe labour discipline, the working rules and the orders of management; to improve his skill, raise labour productivity, etc.

Management may fix a probation period for a worker before giving him permanent employment. This period may not exceed six days for a worker, two weeks for an office worker, and one month for an executive. Depending on the record of the probation period, management either gives the person in question permanent employment, or dismisses him with payment of compensation for the trial period at the rate of pay for the grade, class, etc., allowed him at the start of the probation period. A worker dismissed as having failed in probation may file a grievance with a labour disputes board.

Labour contracts may be concluded both orally and in writing. A contract must be done in writing only when this is specifically required by law.

The most common type of labour contract is one for an *indefinite period*. The Labour Code also provides for the

conclusion of labour contracts for a *definite period*, or for the time necessary to *perform a definite job*.

Transfer to another job. Transfer to other work is ordinarily allowed only by agreement between the employee and management, which must employ the former in work for which he was hired. Article 36 of the Labour Code of the R.S.F.S.R. and the corresponding articles of the labour codes of the other Union Republics prohibit management from demanding that a worker should perform work outside the type for which he was hired. The type of work is determined by trade, speciality, grade or position. The employment of everyone in accordance with his speciality and skill is a principle that makes for business efficiency and accords with the workers' professional and material interests. It is also a legal duty of management prescribed by law. There may be temporary exceptions to this rule only in emergencies provided for by labour laws. Thus, in an emergency, a worker may be *temporarily transferred* to other work in the same enterprise or establishment, and retains his average earnings (LC 36), or when such transfer is made imperative by the needs of production, for a period not exceeding one month (LC 37¹). A worker guilty of breach of labour discipline may be transferred to a lower-paid job for a period not exceeding three months.

A worker who, because of tuberculosis or any occupational disease, is temporarily unable to perform his usual work, but is able to perform other work without any ill effects either on production or the normal course of treatment, is temporarily transferred to such work on the advice of a medical board or his doctor, subject to approval by the head physician of the medical establishment. Such transfer is effected by management in co-ordination with the trade-union committee. If the new (temporary) work is rated lower, the worker is given a benefit from the social insurance fund in accordance with a doctor's chit. This amount is calculated in accordance with the general rules governing temporary disability benefits, but in such

a way that with the earnings on the new job it does not exceed total actual earnings on the old job. If management fails to provide other work as specified in the chit, compensation is paid for the days lost, in accordance with the general rules.

In the event the order transferring an employee to another enterprise or establishment or to another place is issued without legal grounds, he has the right to demand its annulment and reinstatement at the given enterprise or establishment through a labour disputes board.

Management is bound by law to effect transfers to lighter work when this is required by the interests of the worker himself, as in cases of reduced capacity for work, contra-indication for health reasons, and pregnancy. Expectant mothers transferred to lighter work retain average earnings during the entire duration the transfer is effective. Persons transferred to lower-paid jobs in consequence of reduced capacity for work or because of contra-indication for health reasons are paid in addition to their actual earnings the difference between the old and the new rates in the first 12 working days on their new work.

A worker who accepts transfer to another place is paid compensation to cover travelling expenses for himself and his family and settlement expenses in the new place (a lump sum equal to one month's pay for himself, plus 25 per cent of his pay for each member of his family, plus a daily allowance, and passage and luggage transportation costs).

When a worker is transferred to another place at his own request the said compensation may be paid in full or in part, by agreement of the parties. When a worker has to travel to his place of work in another district, he is paid the cost of passage for himself and his family, and transportation of his belongings, plus a daily allowance for the duration of the journey. A grant in the form of a lump sum and wages until the start of work may be paid by agreement of the parties. Persons sent to work in the Far North

and similarly remote localities are paid double the usual lump sum grant and daily allowance.

Young specialists sent to work in another place after graduation from a higher or secondary specialised school receive compensation for cost of passage and transportation of belongings at the usual rate, plus a lump sum grant equal to half the wage for the specialist and one-eighth for each member of his family travelling with him. Young graduates from a technical school or labour reserves school who are sent to work in another place receive compensation from the enterprise to cover the cost of passage, transportation of luggage, and a daily allowance of 75 kopeks while in transit, regardless of their wages. Upon arrival at the enterprise, they are paid in advance 30 rubles, which is later deducted from their wages in instalments over a period of six months.

A distinction should be drawn between a transfer and a business trip, when on orders from the chief of the enterprise or establishment an employee travels from his permanent place of work to fulfil an assignment in another place. Employees sent on business trips are guaranteed employment rights and average earnings. They receive a daily allowance and compensation for travelling expenses provided for by special statutes.

Grounds for termination of labour contract on the initiative of management. Soviet law gives ample protection to workers against unlawful discharge. Management may discharge a worker on its own initiative only on grounds directly provided for by law. These grounds are very few, and their number may not be increased.

A labour contract may be terminated by agreement of the parties upon expiry of its term or upon declaration by either party in the order provided for by law (LC 47, etc.).

Management may discharge a worker only with the prior consent of the factory or office trade-union committee.

According to Article 47 of the Labour Code of the R.S.F.S.R., management may discharge a worker on its own

initiative (with the consent of the trade union) in the event of liquidation of the enterprise in full or in part, or reduction of staff (§ a);

suspension of work for a period exceeding one month for reasons of production (§ b);

unfitness for the work performed (§ c);

repeated failure to perform his duties when other disciplinary penalties prove ineffective (§ d);

commission of a crime directly connected with an employee's work and established by a court sentence that has entered into force; and also in the event of the employee's detention for more than two months;

temporary disability, except when due to pregnancy and delivery (§ g);

reinstatement in the manner provided for by law of a person to the position held by the given employee (§ h).

Management may also discharge an employee in the event another employee, who held the position before being called up for service in the Armed Forces, returns to his position due to release by the draft board or from military service within the first two months.

An employee may be discharged for unauthorised absenteeism without good reason (Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of April 25, 1956).

According to Article 49 of the Labour Code of the R.S.F.S.R., an employee may also be dismissed at the demand of the trade union. In practice this article is used by trade unions in respect of members of management guilty of malicious violations of labour legislation and collective agreements. This demand may be made by a trade union not below the district level. In the event management disagrees with its demand it may, within a period of seven days, appeal to a higher trade-union body. The employee in question may also file a complaint with that body, whose decision is final.

Termination of labour contract on the initiative of the employee. A worker has the right to cancel a labour con-

tract and terminate work at an enterprise (establishment) at any time, giving management a fortnight's notice.

Workers dismissed for repeated failure to perform their duties or for the commission of a crime forfeit their record of continuous service, and become entitled to benefits in the event of temporary disability after working at the new place for not less than six months. Factory and office workers dismissed at their own request do not forfeit their record of continuous service and are paid temporary disability compensation regardless of their length of service at the new place, provided they secure new employment within one month. Lapse of this time entails loss of record of continuous service; accordingly, the right to receive temporary disability benefits arises after working at the new place for not less than six months. This is not applicable to the following:

a) workers dismissed because of illness, disablement, or retirement on pension; b) persons terminating work because of enrolment at a higher or secondary school or a post-graduate course; c) persons leaving work because of transfer of their spouse to another place; d) expectant mothers and mothers with children under 12 months old in connection with transfer to work at their place of residence; e) persons dismissed for other valid reasons provided for by the decisions of the U.S.S.R. Council of Ministers. Valid reasons for which record of continuous service is maintained are departure of an invalid war veteran to his family's permanent place of residence; and departure of members of the family of an invalid war veteran (spouse, children and parents) to the invalid's permanent place of residence. Record of continuous service is maintained when an employee goes to work at a higher school after being elected in a contest to the post of department head, professor or assistant professor. Record of service continues to run also when members of the family of a person leaving for the Far North are discharged at their own request. Similar privileges are extended to executives, specialists and

skilled workers dismissed in view of their desire to work in agriculture in the virgin lands, etc.

Persons dismissed at their own request because of temporary disability from labour injury or occupational disease receive temporary disability benefits regardless of length of service at the new place.

Dismissal pay. When a worker is discharged because of reinstatement of another worker previously occupying his post (LC 47 h), or refuses to accept transfer to another district together with the enterprise (LC 37), management is duty bound to give the worker dismissal pay equal to his average earnings for 12 working days (LC 89). A worker who is drafted into the Armed Forces or enlists of his own accord is also entitled to dismissal pay.

When a worker is dismissed because of liquidation of the enterprise, reduction of staff, or prolonged suspension (over a month) of work, and also because of unfitness for the work he is doing, he must be given a two weeks' notice. Otherwise, he must receive dismissal pay equal to his average earnings for 12 working days. There is no notice or dismissal pay when discharge is for other reasons.

The notice becomes inoperative if, in accordance with the law, the employee had been notified of dismissal two weeks in advance but was not dismissed on the specified day. In that event management must either give the employee another two weeks' notice or pay him dismissal pay. This rule also applies when the employee could not be dismissed on the specified day for reasons beyond the management's control, such as the employee's illness before the day on which he was to have been dismissed in accordance with the notice.

When a worker is dismissed, management must give him his work-record book with the entry of dismissal. The ground for dismissal must be entered either as the formulation of a labour law or as a reference to the relevant article or paragraph of the Labour Code.

When an employee is dismissed by reason of being unfit

for the work he is doing (LC 47 c), the work certificate he is given must specify the type of work for which he is unfit by reason of his qualification.

4. WORKING HOURS, REST, AND LEISURE

All workers in the U.S.S.R. have been transferred to the seven-hour working day, and the workers of key underground trades in the coal and mining industry, to the six-hour day.

The transfer was completed in 1960. In 1962, workers with the seven-hour working day will be transferred to the 40-hour week. The transfer to the 35- and 30-hour week is to start in 1964.

Under the laws in force, the working day at enterprises and establishments transferred to the seven-hour day must not normally exceed seven hours. Arduous occupations have a six- and five-hour day, and in exceptionally difficult working conditions the working day is reduced to four hours. At plants operating on a three-shift schedule, the night shift is seven hours. Night work is equated to day work in continuous production, and also when the work day is reduced by reason of harmful conditions. Night time is reckoned from 10 p.m. to six a.m.

Night work is paid at a higher rate. Each hour of night work is paid as follows: with the seven-hour working day as seven-sixths, and with the six-hour day, as six-fifths of a day-time hour.

For every hour of night work employees working on a piece-rate plan receive an additional one-sixth and one-fifth respectively of the hour rates for their grade.

During their training period and subsequent work apprentices between the age of 15 and 16, trained individually or in teams, have a four-hour working day. Factory and office workers between the age of 16 and 18 work six hours. For their reduced working day,

young persons are paid as much as workers of similar grades for the full working day. Young persons between the age of 16 and 18 who are allowed to work under piece-rate systems are paid for such work at rates equal to those of adult workers, with extra compensation at their basic rate for the difference in hours between the full working day for adult workers and the reduced working day for young persons.

The Decree of the Presidium of the U.S.S.R. Supreme Soviet of March 8, 1956 reduced the working day to six hours on the eve of days off and holidays. For persons working a seven-hour day it is reduced by one hour; there is no change for the six-hour day.

Ordinarily the rules governing working hours may not be modified by agreement of the parties. The working day may not be lengthened under the pretext of an agreement between management and the worker on the performance of additional work outside the usual range of his duties for a special compensation; management is not exempt from responsibility for non-observance of the established working hours on the plea that compensation for the work is paid at piece-rates.

Overtime is generally prohibited (LC 103). It is permitted in exceptional cases, on grounds prescribed by the law, and on a limited scale, namely, not more than 120 hours a year per employee, and not more than four hours on consecutive days. Within these limits, overtime is permitted when there is need to perform work, say, to avert a natural disaster or dangers arising in an emergency.

Persons under the age of 18, pregnant women beginning from the fourth month, and nursing mothers are exempt from overtime work. Invalids duly certified by a medical and labour experts board may not be assigned to overtime work.

Performance of overtime work requires prior permission from the factory (office) trade-union committee whose duty it is to verify the actual need for such work, and the calcu-

lations of the actual number of overtime hours, and to demand that management should eliminate the shortcomings in the organisation of labour it discovers.

Compensation for overtime work is paid at a higher rate: the first two hours are paid time-and-one-half, and the following hours, double time.

Cash compensation for overtime hours may not be substituted by compensatory leave. On the other hand, a weekly day off unused by the worker through the fault of the enterprise or establishment must be compensated by the granting of another day off within the next two weeks. Cash compensation for unused days off is permitted only in exceptional cases, as in the event of dismissal or when conditions of production do not allow the granting of another day off.

Compensation for overtime is paid provided the work was performed on the orders of management. Management's failure to secure permission for overtime work may not serve as ground for refusal to pay the employee compensation for his work.

In some cases workers retain their wages even when not performing their work, as during the discharge of state and public duties, provided the law allows their discharge during working hours; during the time they participate in Party, Young Communist League, trade-union and co-operative congresses and plenary meetings not below the district level.

Rest and leisure. In the U.S.S.R. regulation of working hours is not confined to establishing the length of the working day. It affects and defines all the other elements making up the working timetable: relief periods; alternation of work and rest; and the length of the working week. In the course of the day, not later than four hours after the start of the work, the worker is given a break of not less than 30 minutes' duration. Nursing mothers have additional breaks not less than 30 minutes each after three and a half hours of work, with compensation paid at their average

earnings. After six days of work, the employee is given a period of rest, running on the average not less than 41 hours (actually 42 hours).

Apart from the weekly days off, workers do not work on the following days: January 1, New Year's; May 1 and 2, the International Working People's Holiday; November 7 and 8, the anniversary of the Great October Socialist Revolution; and December 5, Constitution Day.

Work on holidays is permitted at continuously running enterprises where stoppage is unfeasible for reasons of technology or public needs. Other type of work permitted includes emergency repairs and loading and unloading on railways and river transport.

On holidays work is remunerated as follows:

- a) with time-rate plans, at double the basic rates;
- b) with piece-rate plans, at double the piece rates;

With the consent of the worker, cash compensation for work on annual holidays may be substituted by extra days off.

All workers continuously employed at a given enterprise or establishment for 11 months are given annual paid vacations lasting 12 working days. Some categories of employees have longer annual vacations: teachers, 48 days; permanent workers in the timber industry and forestry, 24 days, etc. Factory and office workers who have not attained the age of 18 are given a vacation of one calendar month.

Workers engaged in particularly harmful or difficult operations have additional vacations ranging from six to 36 working days, depending on the nature of their occupation, in accordance with lists approved by the Government of the U.S.S.R. Extra vacation time given for reasons of health hazard runs with the basic vacation. In some cases the law provides for extra vacation time for continuous service at one enterprise. Thus, workers employed for not less than two years running in the mining, metallurgical, metal, chemical and textile industries and the building

materials industry, on railways, water and automobile transport, and on big construction projects, are allowed an extra three days' vacation every year (or receive a cash compensation). Permanent workers in the timber industry and forestry receive an extra vacation of one month for every three years of work at the same enterprise.

As has been said, employees with unspecified hours may be given an extra vacation of 12 working days. At the enterprises the duration of extra vacations for these employees is specified in the appendix to the collective agreement.

Additional vacation with pay is allowed persons enrolled at young workers' evening schools who remain on the job, for graduation examinations, and for oral tests and defence of theses for persons taking correspondence post-graduate courses. Additional paid vacations are also allowed students of evening and correspondence higher and secondary specialised schools.

The following principles implemented in Soviet legislation are designed to make real the annual vacation: a) *vacations are with pay*, i.e., during the vacation workers retain their wages, which are paid in advance for the entire vacation period; compensation for vacation time is paid at average earnings; b) *vacations are made available to all workers*; vacations may be substituted by a cash compensation only in exceptional cases: when an employee is dismissed without having used up his vacation, or when he is indispensable; c) vacation is *regular*, namely, once a year. Vacation may be postponed to the following year only in exceptional cases, when an employee's leave may have an unfavourable effect on the normal course of operations at the enterprise (establishment); postponement of vacation requires agreement between management and the employee; vacations may not be accumulated for more than two years; d) the vacation period is *continuous*, it may not be broken up and granted in parts at various times without the consent of the employee concerned, except when circumstances arise during his vacation preventing him from

using it, such as illness certified by a doctor's chit; performance of state duties, etc. In such cases the vacation is either extended or postponed.

A worker on vacation may neither be dismissed nor given notice of dismissal by management. Dismissal notice served on a worker on vacation is invalid.

5. WAGES

The Soviet state consistently implements the principle of personal incentives in production, and remuneration in accordance with the quantity and quality of work done, taking account of the skills required, the arduousness of the operations, and individual productivity.

Distinction in the amount of wages depending on skills and working conditions, the actual individual expenditure and results of labour is effected by the institution of appropriate basic rates and wage systems.

Without allowing a general wage equalisation, the Soviet state makes regular adjustments and improvements in the basic rate system to raise wages in the lower brackets. Under the current seven-year economic development plan, workers in the lower brackets are to have their wages increased from 27-35 rubles to 40-45 rubles from 1959 to 1962, and up to 50-60 rubles from 1963 to 1965; at the same time there is to be a certain increase of basic rates in the middle brackets.

Basic wage rates. Workers' wages are determined by basic rates in accordance with their skills.

Job evaluation is provided for by basic rate and skill handbooks. The ratios of compensation for operations requiring different skills are determined either by the basic rate for each skill, or with the aid of rate scales.

Job evaluations, rate scales and basic rates are worked out for the various industries and approved in the manner established by the Government. Trade unions take part in the rate setting.

Rate scales give a definite rate coefficient for each grade, indicating the ratio of the rate of a given grade to that of the first grade, as the wage floor. There are usually two rates for each grade, the time rate and the higher piece rate. Every worker is given an entrance grade in accordance with the basic rate and skill handbook. This is done by management in co-ordination with the factory trade-union committee. Office workers are paid fixed monthly salaries.

Leading specialists may be given higher individual salaries in the established order.

The wages of some categories of workers depend on length of service in a given industry or trade; they are given length of service increases at specified intervals, or annual cash rewards; in some trades and occupations the monthly salary depends on seniority.

Wage systems. There are a piece-rate system, time-rate system and bonus system. Under the piece-rate plan the amount of wages is directly related to the worker's actual output; and under the time-rate system, to the time spent on his work. Under the piece-rate system the payment per unit is established from the basic rate for the given job and the output rate. The total amount of wages depends on the number of units (or parts thereof) produced by the worker.

It is the duty of management and technical personnel to create the necessary conditions for the fulfilment and overfulfilment of output rates, and to give the workers technical instructions. If a worker fails to fulfil the output rate through no fault of his own, he is guaranteed compensation of not less than two-thirds of his basic rate. If in normal working conditions a worker repeatedly fails to fulfil the output rates he may be dismissed (LC 47) or transferred to another job (LC 57).

Most office workers are paid under the time-rate plan.

Bonus plans are offered to executives and technicians. Over and above their fixed monthly salaries they are paid bonuses for fulfilment and overfulfilment of production

plans, provided all key quality indices are also attained. Thus, bonuses are paid only if the state plan for reduction of costs is fulfilled. Bonus plans are also offered to some groups of workers, who are paid bonuses over and above their piece-rate or time-rate earnings for improved quality (reduction of repair costs, saving of raw materials, fuel, etc.).

Basic rates and wage systems are modified with an eye to broadly introducing into production technically justified output rates corresponding to the current level of technology and organisation of production; raising the share of basic rates in workers' earnings and establishment of correct relationships in the levels of basic rates for the various industries and trades on the basis of skills and with compensation privileges to workers engaged in arduous operations and in hot shops; regulating wages for some categories of engineers, technicians and office workers; eliminating the plurality of wage plans for engineers, technicians and office workers; enhancing the role of bonus plans in stimulating the introduction of new technology, higher productivity of labour and lower production costs.

Payment of wages. Wages are paid at intervals of not more than two weeks at the place of work, just before or after working hours. Workers with piece-rate systems receive an advance on wages in the first half of the month, and the balance at the end of the month. The amount of the advance payment is determined by agreement between management and the trade union at the conclusion of the collective agreement, but it must not be less than the worker's basic rate for the pay-roll period.

Unjustified delay in the payment of wages beyond the established time limits, or the use of money earmarked as wages for other purposes, is a criminal offence.

Protection of wages against illegal deductions. Soviet law protects the right of workers to receive the wages due them. Deductions from wages may be made only in cases directly provided for by law. Thus, deductions from the

wages of workers receiving more than 50 rubles a month are income tax and the tax on bachelors and childless couples. Management has the right to make deductions from the wages of workers to cover an advance paid on account of wages, or an advance (unused but not repaid) for a business trip or as petty cash (provided the worker does not dispute the grounds or the amount of the deduction), and also to recover excess sums paid out in consequence of book-keeping errors.

Deductions from wages are also made in accordance with writs of execution issued by judicial organs. Such deductions must not be in excess of 20 per cent of the wages due the employee on each pay-day. When wages are attached for the maintenance (alimony) of members of the family, deductions must not exceed 50 per cent of the employee's wages.

When several sums are adjudicated from the wages of an employee, the total amount of all deductions must in any event not exceed 50 per cent of his earnings. Execution may not be levied on guarantee and compensatory payments (dismissal pay, etc.).

The limits of deductions from wages of employees who cause material damage to the enterprise (establishment) are prescribed by the laws on the financial liability of workers inflicting damage on the enterprise (establishment) in the performance of their duties (see Section 8).

6. LABOUR PROTECTION

In Soviet law labour protection is taken to mean the aggregate of measures to create a normal, technically safe and hygienic atmosphere for the working people in the process of work. The further easing and sanitation of their working conditions, removal of the causes of accidents and occupational diseases are regarded by the Soviet state as a cardinal task.

Labour protection is ensured by a) strict instructions to economic agencies concerning sanitation of working conditions; b) state appropriations to cover the cost of such measures; spending of these funds is determined by the collective agreements and special agreements between economic bodies and trade-union committees; c) extensive technical information and training; d) general and special supervision of labour protection by technical inspectors of trade unions and other bodies vested with supervisory powers; e) mass control; f) establishment of administrative, disciplinary and, in serious cases, of criminal responsibility of management violating labour legislation.

In blueprinting new industrial enterprises, matters of labour protection and technical safety are brought to the fore. This involves selection of the proper technical appliances, installation, shielding and servicing of machines, fitting them with protective devices, etc.

No enterprise may be commissioned, started or transferred to other premises without the permission of technical inspection offices and industrial sanitation supervision offices. This applies also to the reconstruction of buildings, expansion of production, rearrangement of machinery, and replacements.

All enterprises and establishments must take the necessary measures to eliminate or reduce production hazards, prevent accidents, and maintain working places in proper hygienic conditions in accordance with the special rules laid down for the various industries.

To ensure safety, management must issue instructions to workers concerning the general rules of behaviour at the enterprise, the specific features of the mechanism operated by each, and supply each worker with instructions on safety engineering. Workers operating mechanisms which are hazardous to their operators or to others must undergo a safety engineering test.

The law prescribes the establishment of surgeries at all enterprises and big shops, regular medical examination

of workers in harmful occupations, constant supervision over their health, the use of prophylactics to counteract the ill effects of poisonous substances on their health, etc.

Collective agreements, and the trade-union and management agreements on labour protection and safety engineering appended to them, contain obligations to carry out in the course of the year comprehensive health-giving measures, specifying the dates, persons responsible for their execution, and the costs. This includes ventilation, installation, repair and remodelling of protective barriers and shielding devices, improvement of the lighting system, supply of drinking water, installation and continuous operation of boilers, baths, showers, dissemination of safety ideas, medical examinations, special protective clothing, etc.

There is special legislation on labour protection for young persons and women, prescribing health-giving measures, and the range of jobs from which women and young persons are debarred; prohibiting the labour of juveniles under the age of 15 and specifying the conditions on which juveniles over 15 years may be allowed to work; listing the benefits for juveniles and women in labour, everyday conditions, etc. Special privileges are extended to expectant and nursing mothers.

With the object of further improving the mother and child welfare the Presidium of the U.S.S.R. Supreme Soviet on March 26, 1956 decreed an extension of maternity leave from 77 to 112 calendar days: 56 days before and 56 days after parturition, with payment during the period of an allowance in the established order. In the event of abnormal parturition or delivery of two or more children, leave is extended to 70 days.

At their request, management must grant women supplemental leave (without pay) not exceeding three months to follow maternity leave. Women who take leave of absence after child-birth do not forfeit length of service rights, pro-

vided they return to work not later than a year from the day of delivery (without, however, the period of absence being included in the length of service).

State supervision over the observance of labour protection and safety engineering rules is exercised by technical inspection offices operating under trade unions. They are vested with great authority by the state, and are composed mainly of volunteer technical inspectors, who are approved by the higher trade-union bodies and work under their direction.

Technical inspectors have the right to inspect all enterprises within the scope of a given trade union and to verify the state of labour protection; to demand of management documents, certificates, material and explanations on labour protection matters; issue obligatory instructions to eliminate the violations of labour protection laws they discover; investigate cases of violation of safety engineering rules and health standards, etc. Technical inspectors are entitled to call members of management violating labour protection laws to account by imposing fines, and when necessary transmitting records of the case to the organs of investigation.

It is the duty of trade unions to see that all state appropriations to improve industrial conditions are used strictly in accordance with their specified purpose, and that Soviet labour laws, in particular laws protecting the labour of women and young persons, and the laws governing working hours and rest and leisure, are accurately observed by economic agencies.

Apart from trade unions, special inspection offices exercise state supervision in the various specialised fields. They include the health standards office, state committees and inspection offices under the Councils of Ministers of the Union Republics to supervise safety of operations in industry and mining; the latter also have the functions of gas and boiler inspection.

Management is directly responsible for labour protec-

tion and implementation of appropriate measures at the enterprises.

Labour protection inspectors and labour protection commissions are elected to operate under trade-union committees at enterprises, establishments, in shops and trade-union locals. They exercise day-to-day control over the fulfilment of the requirements of labour protection laws.

7. INTERNAL LABOUR ORGANISATION

Work regulations are a legal form of regulating the process of collective socialist labour and ensuring labour discipline. They are in force at state and public enterprises and establishments. Standard Regulations of Internal Labour Organisation were approved on January 12, 1957 by the State Labour and Wages Committee of the U.S.S.R. Council of Ministers in co-ordination with the All-Union Central Council of Trade Unions. When necessary, the executive amends these regulations by agreement with the trade-union committee to bring them into line with the specific conditions at each establishment or enterprise.

According to the Regulations, it is the duty of management to organise the labour of workers in such a manner as to allow each to work in his trade and skill; create conditions for higher labour productivity, development of innovators' movement, exchange of experience, introduction of technically sound output rates, new machinery and technology; strengthen labour discipline; observe labour protection laws and rules; pay wages at specified intervals; ensure a steady rise in the professional skills and efficiency of workers; and take steps to improve their housing facilities and everyday services, etc.

These regulations embrace only a part of the questions making up the internal organisation of labour, namely, the order of employment and dismissal; basic duties of workers

and management; start and end of the working day; use and reckoning of working hours; rotation of shifts; relief periods; general instructions on safety engineering and labour protection, and disciplinary penalties. Other elements of labour organisation (sequence of operations, handling of mechanisms, placing of personnel, etc.) are regulated either by special acts (technological instruction, safety engineering rules), or by administrative acts of management. These acts are greatly influenced by proposals submitted by workers and their trade-union organisations.

Standing production conferences are an important method of mass participation of workers in management. The Ordinance on Standing Production Conferences at industrial enterprises, construction sites, state farms, repair and service stations was approved by a decision of the U.S.S.R. Council of Ministers and the All-Union Central Council of Trade Unions. It determines the rules governing the organisation of production conferences, the content and order of their business, and their powers.

Thus, the internal organisation of Soviet enterprises and the legal acts establishing it are based on the principle of mass participation in management, which, however, does not replace the principle of one-man management but harmonises with it.

Foremen and chiefs of production sections, as the immediate organisers of production on the shop floor, play an important part in strengthening internal labour organisation and ensuring the successful operation of the enterprise.

The Standard Regulations of Internal Labour Organisation provide incentives for industrious and exemplary fulfilment of duties, for innovations, inventions and efficiency proposals, long and faultless service at one enterprise, and other accomplishments.

The incentives are decided upon by management in co-ordination with the trade-union committee.

As has been said above, the incentives for collectives of enterprises which cut production costs and make their

enterprises profitable come from the fund of the enterprise, which is set up at all state enterprises having independent balance sheets and operating on a commercial basis to improve cultural and everyday services and production.

Violations of labour discipline entail the following disciplinary penalties: admonition, reprimand, strict reprimand, transfer to lower-paid work for a period of up to three months, and demotion to a lower position for a similar period.

With the consent of the trade-union committee, management has the right to dismiss a worker repeatedly violating labour discipline if the penalties imposed on him fail to bring about the desired results.

No penalty may be imposed after the expiry of one month from the date on which the violation is ascertained, or six months from the day it is committed. Only one penalty may be imposed for each violation. Before the penalty is imposed, the person violating labour discipline is requested to give an explanation.

Each penalty is communicated to the worker who must sign a receipt of communication. He has the right to appeal against the penalty imposed to a labour disputes board.

If within one year from the date of imposition of the penalty the worker is not subjected to another disciplinary penalty, the penalty is removed from the record. If he has not committed another violation of labour discipline and has in addition proved himself a good worker, the director of the enterprise (head of the office) may remove the penalty imposed by him before the expiration of one year.

Workers are financially liable for the material damage caused by them to the enterprise or establishment under circumstances prescribed by law. The extent of the liability depends on the nature of the damage and the circumstances in which it was caused. In the overwhelming majority of cases this liability is limited, meaning that the worker causing the damage is required to compensate the dam-

age, without, however, the extent of the compensation exceeding the limits established by law or decisions in force. Thus, in the cases provided for by Article 83 of the Labour Code of the R.S.F.S.R., when through the fault of the worker there is injury, destruction or loss of instruments of production (machinery and appliances) or injury of draught animals or productive livestock, failure to collect full payments, loss of documents, total or partial loss of value of documents, or need for management to make unnecessary payments or to pay fines, improper expenditure of moneys issued for business needs, the worker is financially liable for the actual damage, but not in excess of one-third of his basic wage rate, if such damage was caused by his carelessness in work or a breach of the law, the internal labour organisation regulations, or management's special instructions and orders. In the event carelessness results in damage to materials, semi-finished products and finished articles (including spoilage) the worker is liable to the extent of the damage caused, but not in excess of two-thirds of his average monthly earnings.

Only in special cases, expressly prescribed by law, the worker is financially liable in full for the damage caused to the enterprise or establishment. The compensation is not limited in any way, and is equal to the actual damage caused.

This occurs in the following instances:

a) when damage is caused by the worker's actions constituting an offence which entails prosecution under penal law;

b) when full liability with respect to the damage caused to the enterprise or establishment in the performance of his duties is imposed upon the worker by special laws; thus, the decision of the All-Union Central Executive Committee and the Council of People's Commissars of the R.S.F.S.R. of July 20, 1930, established full financial liability of workers of state and co-operative establishments and enterprises who are entrusted with articles of value on account,

for safe-keeping or other purposes; this extends to workers of trading establishments and storehouses of all types (regardless of the nature of their operations) belonging to state and co-operative enterprises and credit establishments; the said workers are financially liable in full for shortages of articles of value over and above the limits established for each kind of article, when this results from negligence on the part of the worker in the performance of his duties;

c) when a contract has been concluded in writing between a worker and management whereby the worker assumes financial liability in full for the depreciation (above a prescribed standard) of articles of value entrusted to him for safe-keeping or for other purposes.

Contracts must not only provide for obligations of the worker to compensate the damage caused by him, but also for obligations on the part of management to create normal working conditions ensuring the correct performance by the worker of the necessary operations with the minimum of risk for the articles of value entrusted to him. Violation of these obligations on the part of management may serve as ground for the court to relieve the worker from the payment of compensation for the damage or to reduce it, and to raise the question of imposing liability on the guilty persons from among management.

Workers are financially liable in full also when damage is caused not in the performance of their duties.

All disputes between employees and management involving the application of full financial liability are settled by the management bringing a suit in court against the worker. If the court satisfies the claim, the compensation is recovered in accordance with the rules governing deduction of wages under writs of execution.

The judicial authorities, in the assessment of the amount of compensation due for damage, must take into account not only the damage caused but also the actual circumstances under which it occurred. It is not admissible to

hold a worker liable for damage which can be classed with normal industrial and business risks.

In the assessment of the amount of the damage, regardless of whether full or partial liability is applied, only loss properly so called may be taken into account but not benefits which the enterprise or establishment has failed to obtain.

When a worker has through negligence produced a defective article and must compensate the damage caused by spoilage of materials, the amount which may be adjudicated from him includes the cost of materials used in the making of the article, including the wages paid for their manufacture. The management is not entitled to claim compensation equal to the sum the enterprise could have received for the article of good quality.

It is the practice at Soviet enterprises that in the assessment of the extent of the damage caused by a worker to the enterprise or establishment, which is subject to compensation, the overhead expenses falling on the defective article are not taken into account and are not included in the compensable sum.

8. SETTLEMENT OF LABOUR DISPUTES

Labour disputes boards, consisting of an equal number of representatives of trade unions and management, are set up at enterprises and establishments. The number of representatives on each side is established by agreement between the trade-union committee and management.

Shops and other sections of plants with their own trade-union committees may also set up their own labour disputes boards.

Trade-union representatives are appointed to labour disputes boards by decisions of the trade-union committees from among its members, and representatives of management by an order of the director of the enterprise, establishment or organisation (shop).

The representatives of the parties are appointed to the board for the duration of the powers of the trade-union committee.

When a worker fails to settle his disagreement with management in direct negotiations, he applies to the labour disputes board, which must examine the dispute within five days from the filing of the application. All disputes are examined by the board in the presence of the worker filing the application. The dispute may be examined in his absence only upon a written request by the worker concerned.

The board has the right to summon witnesses, authorise individuals to carry out technical and accounting check-ups, and demand of management any document or calculations.

Decisions of the board are adopted only by agreement between the representatives of the trade-union committee and management.

The board's decisions must be reasoned and based on the labour legislation in force, the collective agreement, labour contract, work regulations and current instructions and orders.

If the representatives of management and the trade-union committee fail to reach agreement at sittings of the shop board, the worker has the right, within 10 days from the day he receives the extract from the minutes of the board's sittings, to file an application for resolution of the dispute with the plant board. If agreement is reached with the help of the shop board, but the applicant is dissatisfied with it, he has the right, within a similar period, to submit the grievance to the plant board, which either leaves the shop board's decision in force or annuls it and enters another decision on the merits of the case.

If no agreement is reached with the plant board, the worker has the right, within a 10-day period, to file an application with the trade-union committee. If the worker is dissatisfied with the decision handed down by the plant

board, he may, within 10 days from the receipt of the extract from the minutes of the board's sitting, submit the grievance to the trade-union committee. Management has no right to appeal against decisions of the shop or plant labour disputes board.

Trade-union committees must, within seven days, examine applications and complaints involving labour disputes filed by workers.

In examining a complaint against a decision of the labour disputes board, the committee may either leave it in force or annul it and enter a new decision on the merits of the dispute. In that event the committee hears management's proposals on the matter in hand.

In examining a labour dispute on which no agreement had been reached with the plant board, the plant trade-union committee must make a study of all the relevant material, hear the statement of the worker concerned and management's proposals, and then enter a decision on the merits of the dispute.

The committee's decisions on labour disputes involving cash claims must specify the exact amount due the worker.

If the worker is dissatisfied with the trade-union committee's decision on the labour dispute, he may, within 10 days from the day on which he received the committee's decision, file suit with the district people's court.

Management has likewise the right to appeal against the trade-union committee's decision with the district people's court within a similar period, when it believes that the decision is in contradiction to the laws in force.

Decisions of the labour disputes board not appealed against with the factory or office trade-union committee, or resolutions of the trade-union committee not appealed against with the district people's court are subject to execution by management within a period of 10 days, unless the decision or resolution sets a date for their execution. If management fails to fulfil the labour disputes board's decision or the trade-union committee's resolution on the

merits of a labour dispute, the committee issues to the worker concerned a certificate which has the force of a writ of execution. Such a certificate is the basis for compulsory execution by an officer of the court of the decision of the labour disputes board or the resolution of the trade-union committee.

Examination of labour disputes by the district people's court, as well as appeals from and execution of its decisions, are regulated by the codes of civil procedure of the Union Republics.

9. STATE SOCIAL INSURANCE

All enterprises, establishments and organisations employing workers, as well as individuals employing the services of others for their personal convenience, must pay insurance contributions for their employees to the appropriate trade unions. Non-payment of contributions does not deprive the employee of the right to receive all social insurance benefits, but the outstanding contributions plus penal interest are recovered by administrative order.

Elective social insurance councils operate under trade-union committees; social insurance commissions handle the insurance business on the plant or shop scale. They set and determine the amount of insurance benefits paid through the enterprise or establishment; combat incidence of disease; control the work of medical institutions; send workers to sanatoriums, health resorts and holiday homes, and their children to kindergartens, nurseries, summer Pioneer camps, etc.

In the event of *temporary disability* for work (illness, pregnancy and parturition, quarantine, care for sick members of the family), workers are paid a *benefit* until their capacity for work is restored, or they are certified as invalids. In the latter case they are given a pension. The bene-

fit for temporary disability due to an industrial accident or occupational disease, paid to workers of state and mass organisations and their enterprises and establishments, including persons who are not members of trade unions, is equal to 100 per cent of their earnings, regardless of length of service. Benefits for temporary disability due to other causes are equal to from 50 to 90 per cent of earnings, depending on trade-union membership and length of service at the given enterprise.

There is no loss of seniority when a worker is transferred to another enterprise (establishment) by order of a superior agency, or from one enterprise to another (regardless of subordination) by agreement between the heads of these enterprises (establishments). The law allows seniority to run in certain other cases of departure from an enterprise (establishment) or transfer to another enterprise (establishment), as when a worker is dismissed because of reduction of staff or due to unfitness for the work performed, or when he leaves of his own accord to move to the place of residence of his spouse.

Trade-union members with an unbroken 12-year length of service at a given enterprise or establishment are paid a benefit equal to 90 per cent of their average earnings, and so on down a sliding scale. Workers below the age of 18 are paid an allowance equal to 60 per cent of their earnings. War invalids employed at enterprises and establishments are paid a benefit for temporary disability equal to 90 per cent of their earnings, regardless of the length of continued service. Workers who are not trade-union members are paid temporary disability allowances equal to half the allowances paid to members of trade unions. In any event, a benefit may not be less than 30 rubles a month in the towns and workers' settlements, and 27 rubles a month in the rural areas.

Pregnancy and post-confinement benefits depend on the total length of service; continuous length of service at the given plant; trade-union membership; age, and several other

points. Women who are members of trade unions with a three years' length of service, including two years at the given enterprise or establishment, are paid a benefit equal to 100 per cent of their earnings. Women below the age of 18 are paid an allowance equal to 100 per cent of their earnings, provided they have a year's continuous service at the given enterprise or establishment. The benefit decreases with the shorter length of service. Those who are not trade-union members are paid a benefit equal to two-thirds of their earnings.

Pension allowances of workers are regulated by the Pension Law adopted by the Supreme Soviet of the U.S.S.R. on June 14, 1956. It provides for the payment of state pensions in *old age*, in the event of *disablement*, and *death of the bread-winner*.

Special regulations provide for pensions to workers in science, service pensions to certain categories of specialists, and personal pensions.

Old-age pensions are awarded for life, regardless of capacity for work, to men who have reached the age of 60 and have a length of service totalling 25 years; and to women who have reached the age of 55 and have a length of service totalling 20 years. Certain privileges are allowed to workers engaged in underground operations, in hazardous occupations and hot shops. Men with 20 years' service are pensioned off at the age of 50, and women with 15 years' service, at the age of 45. There are also privileges for those who are engaged in other difficult operations: the age limit is lowered to 55 for men, and 50 for women, with general requirements as to length of service.

Old-age pensions are set at from 50 to 100 per cent of average earnings, depending on the amount of the earnings.

When not less than half the length of service required for an old-age pension falls on types of work giving title to privileges, regardless of the last place of work, the old-age pension is set with privileges in respect of conditions and

amount. Old-age pensioners are granted extra payments for continuous seniority or total length of service.

Disability pensions are awarded to invalids with continuous service, whose length is differentiated depending on age. No length of service is required of persons below the age of 20 years who are disabled in the period of work, or persons disabled in an industrial accident or due to an occupational disease. The amount of pension depends on the extent of loss of capacity for work (invalid category) and the causes of disability. When a person is disabled in an industrial accident or by an occupational disease, a higher pension is paid than for disability resulting from a general disease.

The amount of disability pension also depends on working conditions. Workers engaged in underground operations, hazardous occupations and hot shops are paid higher disablement pensions. Higher disablement pensions are also paid to workers engaged in other arduous operations.

Regardless of the last place of work, invalids are entitled to higher pensions when not less than half the required length of service falls on types of work giving pension privileges.

First and Second Group invalids from a general disease are given extra payments for length of continuous service. Besides, old-age pensioners and Group One and Group Two invalids who do not work (regardless of the causes of disablement) are given additional payments for disabled dependents; Group One invalids (regardless of the causes of disablement) are also given a payment to defray the costs of care they need.

Pensions in the event of death of the bread-winner are paid to members of the family of the deceased, whether a worker or pensioner, who are his dependents and are either unable to work or are old, including his children, brothers and sisters under the age of 16 (school children under the age of 18), parents and spouse, grandchildren, grandfather and grandmother. The amount of pension paid to the family

of the deceased depends on the number of its members unable to work or in old age, the working conditions of the deceased, and his earnings. The conditions under which such pensions are appointed are similar to those of disability pensions.

A distinction is made between *full* and *partial* pensions.

Workers who attain pension age in the period of their work, but lack the required length of service to qualify for the full pension, are paid a partial pension, provided they have worked for not less than five years, including not less than three years immediately prior to the filing of application for pension. Partial pensions are also paid to industrial and office workers who become Group One and Group Two invalids due to a general disease in the period of their work, when they lack the length of service required for a full pension; and to the members of families of workers who die in the period of their work from a general disease, when the deceased bread-winner lacked the length of service required for a full disability pension.

Partial pensions are paid in proportion to length of service, but not less than one-quarter of the full pension.

Persons who terminate work before the attainment of the pension age and who have the required length of service may start receiving their pension when they attain the proper age or become disabled, regardless of the time elapsing from the date they stop working. This rule also applies to members of the family of a worker who dies before receiving a pension.

A person who becomes disabled or incapable of work due to an industrial accident—and in the event of his death, his dependents without any means of subsistence—is entitled to bring suit against the enterprise or establishment where the accident occurred for additional maintenance and support, when the injury inflicted is not fully covered by sums paid to the injured person by the social insurance or social security agency. Additional maintenance consists of the payment of the differential between the actual earn-

ings of the injured person and the pension or allowance received under social insurance, depending on the extent of incapacitation for work.

The social security agency may also bring suit against the enterprise or establishment concerned for recovery of pension payments to the injured person. Enterprises, establishments, and organisations are likewise bound to compensate the state social insurance fund for the payments of maintenance and support in cases of temporary disability resulting from industrial accidents or occupational diseases when impairment of the worker's health results from management's violation of the rules of labour protection and safety engineering. In such cases an incontestable claim lies for recovery of the amounts paid out in the form of benefits, in accordance with a decision of the factory (office) trade-union committee.

Action brought by social security agencies against enterprises and establishments for recovery of expenses incurred in the payment of pensions in connection with accidents is known as *subrogation*. Such suits and the suits of the injured persons or their dependents for additional maintenance are subject to satisfaction if the injury to health, or death, was caused by a criminal act or omission on the part of employees of the enterprise or establishment amounting to non-compliance with the rules in force concerning technical safety or with labour laws. The enterprise or establishment is relieved from liability whenever it has established that it was not guilty of causing death or injury to health.

An enterprise or establishment having to pay on the strength of a judgement on subrogation or a suit for additional maintenance may in turn initiate action against the person in office guilty of causing the accident, who is liable to the enterprise or establishment within the limits prescribed by the law on financial liability of workers for any damage caused by them to the enterprise or establishment.

Soviet social insurance also provides for *additional types of security*, namely, allowances in the event of the birth of a child (to cover nursing and feeding expenses) and allowances to workers enrolled at retraining courses on the advice of a medical board. Social insurance funds are also used to finance the establishment and maintenance of summer Pioneer camps and children's playgrounds, accommodation at holiday homes, sanatoriums, health resorts, cost of special diets, and development of physical culture and sports.

Chapter Six

LAND LAW

1. CONCEPT

Before the October Revolution the land system in Russia was a conglomerate of historically backward forms of land relations.

Of the 230 million dessiatines¹ of farm land in tsarist Russia on the eve of the proletarian revolution, the peasantry, crushed and ruined by semi-feudal exploitation, possessed only 75 million dessiatines (an average of seven dessiatines per household); the middle peasantry, 15 million dessiatines (an average of 15 dessiatines per household), and the peasant bourgeoisie, 70 million dessiatines (an average of 46.7 dessiatines per household). The great estates comprised 70 million dessiatines (an average of 2,333 dessiatines per household). The tsar was Russia's biggest landlord: he alone owned over 60 million dessiatines.

This uneven and unfair distribution of land among the propertied and non-propertied classes resulted in the revolutionary peasant movement for land. That was the main trend of the age-long peasant struggle for land in Russia before the Revolution.

Another important factor was that the bulk of the peasants in Russia did not own the land, because they were unable to pay in full for the allotments given to them after the Reform of 1861; in consequence, the land in their use

¹ One dessiatine equals 2.7 acres.—Ed.

was burdened with debts and they had no clear title to it. Russia was in the grip of a semi-feudal system of communal land tenure, which was established by the autocracy in the interests of the landed gentry and which left the toiling peasants dissatisfied.

The peasants of Russia wanted the private ownership of land abolished, and this they clearly expressed in the peasant mandate, which was drawn up on the basis of 242 local instructions and made public on August 19, 1917.

Consequently, the nationalisation of land was conditioned by the unfair distribution of land before the Revolution, and by the fact that the bulk of the toiling peasants did not own land and were not as attached to their plot of land as the petty owners in many other countries.

In view of this, the Second All-Russian Congress of Soviets on October 26 (November 8), 1917 adopted the Decree on Land drawn up on the basis of the peasant mandate. It abolished private ownership of land for good and transferred all land to the ownership of the state. All land, including that of the landlords, the royal family, monasteries, and the government, was confiscated and turned over to the working people for use free of charge.

These provisions were further developed by the Decree on Socialisation of Land, adopted by the All-Russian Central Executive Committee on February 19, 1918, and also the Ordinance on Socialist Land Management and Measures for Going Over to Socialist Agriculture, approved by a resolution of the All-Russian Central Executive Committee of February 14, 1919.

All citizens of the Russian Republic, regardless of sex, creed and nationality, desiring to cultivate land by their own labour or that of their families, received the right of toil tenure, without, however, the right to employ hired labour. Priority was established for collective forms of agricultural land tenure: associations were given better land. Some land plots were set aside for the establishment of state agricultural enterprises (state farms).

All toil tenants had free use of land which was, as a rule, secured to them for an indefinite period. Land was withdrawn from civil commerce: it ceased to be an object of purchase and sale, mortgage, gift, and other civil legal transactions, which were declared invalid.

Under the Decree on Land the peasants additionally received more than 150 million dessiatines, which had been the private property of the landlords, bourgeoisie, the royal family, and other big landowners. The peasants were also released from annual payment of rent totalling over 700 million gold rubles.

Thus, for the first time in history, the Decree on Land established an entirely new system of land relations and became the juridical foundation for the further regulation of these relations on socialist lines.¹

The Decree on Land nationalised all the land, and also the minerals, forests, and waters. These were declared the property of the nation and transferred to the ownership of the state.

These were the first legislative acts, which initiated the new, socialist legal relations in land tenure in the U.S.S.R.

Land legal relations are a juridical form of expression and consolidation of economic relations in the tenure of land as a specific object of ownership, and are a special type of volitional social relations.

Depending on their nature and content, land legal relations are classed as relations arising between the state, the owner of the land, and land tenants, and also between tenants, in connection with the use of land for the purposes for which it is allotted to them; relations between state agencies exercising the functions of disposal and administration of land, and between these bodies and land tenants

¹ Experience, especially since the Second World War, has shown that agriculture can be developed on collective socialist lines without nationalisation of all the land, especially where the class of small and middle producers is numerous and where they are strongly attached to the land which they own. Examples are Poland and Hungary.

in connection with allotment and withdrawal of land, recording and registration of land tenures, land management and the settlement of land disputes.

A notable feature of land legal relations in the U.S.S.R. is that the socialist state, the owner of the land, is a party in any event; even when the matter pertains to legal relations between individual land tenants, each of them is simultaneously a party to a legal relation with the state, the owner of the land. That is one of the specific features of land legal relations which distinguish them from other socialist legal relations in the U.S.S.R.

The Soviet elements of any legal relation, like the rules of Soviet land law, are essentially socialist, for they exclude the possibility of land in the Soviet Union being used as an instrument of exploitation of man by man or a source of unearned income.

After nationalisation, land in the U.S.S.R. ceased to be a commodity; it has no value or price, and is withdrawn from civil commerce. Hence, land legal relations in the U.S.S.R. cannot be classed as civil legal relations. Nor can they be classed as administrative legal relations. Relations between the state, the owner of the land, and land tenants are bilateral relations involving the use of land for economic purposes, and are regulated by the special rules of land law.

In view of this, they constitute a special sphere of relations which are the subject-matter of Soviet land law as a special branch of Soviet socialist law.

Soviet land law made its appearance with the inception of Soviet power and the nationalisation of land. It is an expression of the way in which the agrarian question was solved in the U.S.S.R., in line with the specific social and economic conditions of the many millions of peasants in Russia before the October Revolution.

The use of minerals, forests, and waters is connected with the use of land, and the rules of land law regulate not only land relations, but also the relevant relations in the use of minerals, forests and waters.

Another feature of land law is that it includes not only the rules of substantive law, but also certain procedural rules (procedure governing land management, land disputes).

Land law as an independent branch of Soviet socialist law is an aggregate of rules which regulate the entire system of land relations arising from the nationalisation of land and developing with an eye to a fairer and more efficient use of land, minerals, forests, and waters, as the exclusive property of the state, in the interests of socialist and communist construction in the U.S.S.R.

2. RIGHT OF STATE OWNERSHIP OF LAND

The state's right of ownership of land is exclusive, all-embracing, and absolute. It is *exclusive*, because the state is the only subject of the right of ownership of land. Private persons, mass organisations or co-operative bodies, or state enterprises or establishments may not be its subjects: these subjects of law may be merely users of land and not its owners.

Under Soviet land law, the organs of state power and administration are not entitled to alienate land from the state. That is why Soviet land law does not recognise the institution of alienation of land. Soviet land law recognises such institutions as allotment of land to toil tenants and withdrawal of land by the state from toil tenants.

The fact that land may not be alienated gives rise to other specific features of the right of state ownership of land. First, there may be no disposal of land whereby title to it is transferred to another subject of law, and this distinguishes state ownership of land from state ownership of other objects not withdrawn from civil commerce. Second, all manner of transactions violating the principles of land nationalisation are strictly prohibited, and no transactions may be concluded involving alienation of land for compen-

sation (sale, purchase, barter), gratuitous alienation of land (gift, bequest, inheritance) or transactions involving mortgage of land.

The state's right of ownership of land is *all-embracing*, because the object of that right is the land fund comprising all the lands of the Soviet state within its bounds.

The state land fund, as an object of the right of state ownership, is made up of different categories of land discriminated by their economic purpose and use.

The fund includes:

a) agricultural lands in use by state farms, collective farms, workers, individual peasants, and other subjects of right of agricultural land tenure;

b) special purpose lands, including those assigned for and in use by transport, communications, mines, cultural and other public service establishments, construction sites of electric power stations and industrial enterprises, reserves, etc.;

c) urban lands, i.e., lands within city limits, with the exception of special purpose lands;

d) lands under forests, and also lands set aside for foresting and the purposes of forestry;

e) lands under waters and lands set aside for the purposes of water economy;

f) lands of the state reserve, including all other lands not in permanent use by anyone.

Each category of land within the state land fund has its own legal status laid down by special land legislation, and this determines the rights and obligations of tenants of these lands.

The all-embracing nature of the state's right of ownership of land, as one of the principles of Soviet land law, has nothing in common with the government's presumptive title to ownerless land existing in the legal systems of many capitalist countries. The latter flows from the contrary principle that each piece of land must be private property, and that, consequently, in the absence of a private

owner, the state as represented by the fisc becomes that owner. There can be no "ownerless" or "no man's land" in the U.S.S.R., and no one may occupy a plot of land merely on the ground that it is not in anyone's use. The only ground for receiving land for use is the deed of allotment, i.e., a resolution by the competent state agency granting the use of land.

The state's *absolute* right of ownership of land signifies that the powers of the state, the owner of the land, are unrestricted and indisputable.

The Soviet state, as the exclusive owner of land, has the possession, disposal, and administration of the state land fund as the object of its right of ownership, regardless of whether or not the land is in anyone's use.

Through the proper organs the Soviet state determines the economic purpose of land; effects its planned distribution between the branches of the national economy and land tenants; issues administrative acts on the allotment of land to tenants or its withdrawal from the use of some and transfer to others for more important social needs; performs land management acts connected with the allotment and withdrawal of land, and also with the organisation of the land area in individual use; exercises control over the proper use of land and settles land disputes arising between the individual land tenants over the use of the land allotted to them.

In the Soviet Union, the right of land tenure is exercised directly by the state through its enterprises and economic organisations, and also by allotting land for use to the various mass and co-operative enterprises and organisations and citizens. Regardless of the subject of the right of land tenure, whether state enterprises, mass organisations or citizens, the Soviet state invests all of them with certain rights and imposes on them certain obligations in the proper and efficient use of the land. As a consequence, the right of land tenure appears on the one hand as an institution deriving from and dependent on the state's right of

ownership of land, and on the other, as an independent legal institution within the system of Soviet land law.

Being in possession of the land, the Soviet state also has the right of territorial supremacy, the right of political rule on that land, the right to exercise state power within its frontiers.

The Union of Soviet Socialist Republics is the exclusive, all-embracing and absolute owner of the land. Each Union Republic, being a sovereign state, is at the same time a component part of the Union and through the appropriate organs of power and administration exercises the land-owning powers established for it. In consequence, relations between the Union and the constituent Union Republics in this sphere cannot be viewed as division of title to the land between the Union and the constituent Republics, which is an indivisible entity, but as delineation of their jurisdiction in disposing and administering the land.

The Constitutions of the U.S.S.R. and of the Union Republics lay down the basic principles of delineation of their powers. Article 14 q of the Constitution of the U.S.S.R. says that the jurisdiction of the Union as represented by its higher organs of state power and state administration extends to "determination of the basic principles of land tenure and of the use of mineral wealth, forests, and waters".

The jurisdiction of the Union Republics as represented by their higher organs of state power and state administration extends to "determination of the use of land, mineral wealth, forests, and waters" (Art. 18 o, Constitution of the R.S.F.S.R., and the corresponding articles of the Constitutions of the other Union Republics).

The jurisdiction of the Union and of the Union Republics in the regulation of land relations was defined in the Basic Principles of Land Tenure and Land Management of 1928. But it has now been substantially modified, giving the Union Republics considerably broader rights in the disposal and administration of land. At present, the Union as

represented by its higher organs of state power and state administration confines itself to establishing the basic principles of land tenure and the use of mineral wealth, forests, and waters, and supervises their implementation in the territories of the Union Republics. Moreover, it exercises control over efficient and proper use of the land in accordance with its economic purpose by all land tenants throughout the Union.

All other matters pertaining to direct regulation of land relations in the territory of any Union Republic are within the jurisdiction of the given Republic.

This delineation of jurisdiction between the Union and the Union Republics in the exercise of their landowning powers is conducive to a more correct and effective use of the land, with an eye to local conditions and the tasks facing state and collective farms and other toil tenants in the full-scale construction of communism.

3. RIGHT OF LAND TENURE AND ITS TYPES

Land tenure in the Soviet state gives only the right of use. In contrast to the right of disposal, the right of use is vested, apart from the state, in other subjects of law as well, but only by authorisation of the state. The ground giving rise to the right to use land is the administrative deed of allotment of land to a tenant by the state, in whom title is vested.

In content, the right to use land is discriminated by subject and object; in consequence, land tenure is a complex legal institution, and the right of land tenure falls into several categories.

A distinction should be made in the right of land tenure by subject when it is exercised by 1) the state as represented by its enterprises, establishments and organisations; and 2) all other land tenants (mass organisations and their enterprises and private persons). But it must be noted that

even when the state makes use of the land through its agencies, the latter, as independent subjects of law, as juridical persons with land in tenure, do not appear as owners of the land—which they are not—but merely as subjects of the right of land tenure.

Having received land in tenure, state, co-operative and other enterprises, establishments and organisations, and also private persons, enter into definite land legal relations with the state, thereby incurring obligations to it in respect of the proper and efficient use of land for the purposes for which it was allotted to them.

Depending on the subject, the types of land tenure are also classed as primary and secondary. This depends mainly on who makes the land available to the tenant. If it is allotted directly by the organs of state power or duly authorised organs of state administration, such land tenure is regarded as primary. On agricultural lands, state farms and other state farming enterprises, collective farms and other agricultural co-operatives, receiving land directly from the state as represented by its duly authorised agencies, are regarded as primary tenants.

A land tenant receiving land not from the state directly, but from a primary tenant, is regarded as a secondary tenant. An example is a collective farmer who is allotted a plot by the collective farm, or a worker who receives a plot of land in connection with his labour relations with a state farm.

Classification of types of land tenure by object depends in the main on the economic purposes of the land plots in use.

Agricultural lands, special purpose lands, urban lands, and other lands may be objects of land tenure. The rights and duties of tenants and persons permitted to use land depend on the economic designation of the land. Thus, depending on the subject (state enterprise, collective farm, etc.) and the object (agricultural, urban, special purpose land, etc.) a distinction is made between the types of land

tenure, which are independent legal institutions, such as the right of state-farm land tenure, the right of collective-farm land tenure, the right of personal plot tenure by workers and other employees, and collective farmers and individual peasants.

These types of land tenure differ from each other in the range of rights vested in the subjects of land tenure and in their duties to the state.

But they have a number of common features which blend them into the right of land tenure as a general institution of Soviet land law. These features are:

a) *Land tenure is free.* In the Soviet Union land is allotted to all tenants free of charge. Agricultural lands may not be leased, and such transactions are illegal. This is reflected in all major land laws, and in respect of collective-farm tenure, also in the Constitution of the U.S.S.R. (Art. 8).

b) *Land tenure is purposeful.* All land tenure is in strict accordance with specified purpose. This is the principal duty of the tenant and the *sine qua non* of land tenure. In accordance with the laws in force, the tenant may not, without the knowledge of the proper state agencies, modify the designated purpose of the land allotted to him or use it for other purposes. This requirement flows from the planned nature of the socialist system of economy, and hence, from the planned nature of land tenure.

c) *Land tenure is stable.* Land in the U.S.S.R. is ordinarily allotted for an unlimited period, i.e., for permanent use; it is secured to collective farms for use in perpetuity. This gives tenants confidence that they may use the land undisturbed and invest in it the necessary labour and money without the fear of someone else enjoying the fruits thereof.

But land is sometimes secured for a definite period, i.e., under the right of temporary use of the land.

d) *Land tenure is subject to control.* In allotting land, the Soviet state, as the owner of land, wants it to be used strictly in accordance with its purpose and with the ut-

most effect. It controls land tenure through a system of state organs and above all through the State Planning Committee of the U.S.S.R.

e) *Land tenure is safeguarded.* In vesting tenants with rights, the Soviet state sees to it that these rights are not violated. That is why protection of the rights of land tenants is exercised by the state itself, as represented by its competent organs, and is one of the principal functions in the disposal and administration of the state land fund.

The forms and methods used by the Soviet state to safeguard the rights of land tenants are manifold. Violation of their rights entails administrative, civil (financial) and, in certain cases, criminal responsibility.

The right of land tenure is safeguarded by the organs controlling land tenure. It is their duty to take lawful measures to curb every violation of the right of land tenure and to restore it when invaded.

The R.S.F.S.R. Land Code says that in the event of violation of the land rights of tenants or illegal interference in their economies, local organs of power are bound to take immediate steps to restore the violated rights (Art. 26).

Under Soviet land laws, no land tenant may be deprived of his rights to the land without due legal grounds. Observance of this principle is insured by the precise enumeration in the land laws of the grounds on which the right to land tenure may be terminated.

Each type of land tenure has its specific features. Thus, the right of land tenure of state farms—which are state agricultural enterprises—is exercised in the name of the state, the owner of the land, and in the interests of socialist society.

State farms are the highest form of agricultural production in the U.S.S.R. They are set up on the state-owned land, and use state-owned resources and implements. All their produce is the property of the state, and goes to satisfy the needs of Soviet society.

In this, state farms differ from collective farms, which are co-operative agricultural enterprises set up by their members from among individual peasants, by the voluntary pooling of their personal implements and other means of production, and their land holdings.

All the produce of a collective farm is its property, of which it is free to dispose in accordance with the Rules of the Agricultural Artel.

Land is secured to state farms for use free of charge for an unlimited period, and to collective farms for use free of charge in perpetuity. This is to emphasise that the collective farms may not be deprived of land in any event. Soviet law prohibits the liquidation of collective farms by reason of withdrawal of their land.

Collective farms are the principal land tenants of agricultural land.

State and collective farms may also have the use of forests and waters. In contrast to state farms, collective farms may use the forests secured to them not only for their economic needs, but also to sell surplus timber to their members and other persons at statutory prices.

State and collective farms are entitled to the free use of so-called common minerals (sand, clay, stone, gravel, limestone, etc.), found on the lands secured to them and within the limits necessary to satisfy their economic needs.

As primary land tenants, state and collective farms are not only entitled directly to use the land secured to them, but also to allot house-and-garden plots from their enclosures to workers of state farms and members of collective farms within the limits and in the order specified by law.

The right of land tenure by subsidiary farms hardly if at all differs in content from the land tenure of state farms. In contrast to state farms, subsidiary farms are not independent subjects of the right of land tenure. It is the enterprises, establishments, and organisations under which the subsidiary farms are operated that are the subjects of this right. Furthermore, in contrast to state farms, it is not the

purpose of these subsidiary farms to supply society as a whole with their produce, but only workers of the enterprises and establishments under which they are run. As a consequence, their products are used by catering establishments of these enterprises. Holiday homes, sanatoriums, kindergartens and nurseries receive additional foodstuffs from their subsidiary farms.

The designation of the right of repair and service stations (RSS) and machine and tractor stations (MTS) to land tenure is quite different from that of state farms and subsidiary farms.

The RSS and MTS do not farm. Their task is to help collective farms cultivate the land and to repair and service their machinery. Therefore the land secured to the RSS and MTS is used by them for administrative and economic buildings and structures, storehouses, garages, repair shops, and for subsidiary farms.

In describing the various types of land tenure established for workers of state enterprises and organisations it must be said that the laws in force usually condition their land tenure by their labour relations, and refer the allotment of land to them to the competence of these enterprises, establishments, and organisations. As a consequence, the right of land tenure of workers is by and large a derivative not only of the state ownership of land but also of the right of land tenure vested in the given enterprise, establishment and organisation.

Thus, the land tenure of workers employed at state farms depends on their labour relations with these state farms; and that of workers engaged in transport, on their labour relations with its organs.

This link-up of the land tenure of workers and their labour relations with enterprises, establishments or organisations springs from the obligation incurred by these bodies to improve the material welfare of their employees, and also from the fact that in the U.S.S.R. the land tenure of workers is not a source of basic earnings but a source

of additional earnings to their wages, improving their material position. That is why the land tenure of workers in any form is of a strictly subsidiary (consumer) nature and may not be turned into a source of unearned income. That is why, too, its size is such as to satisfy only the personal needs of the worker and members of his family.

According to Article 10 of the Constitution of the U.S.S.R. citizens have a personal property right in their dwelling-houses and subsidiary husbandries. Land tenure of workers and other employees serves to realise just this personal right of Soviet citizens.

This right is exercised by receipt and use of a household plot, vegetable garden, orchard or service allotment, and also a plot for the construction of a personal dwelling-house in a town or urban-type settlement. Soviet land law incorporates the principle that workers may have the use of only one plot of land.

Plots are usually allotted from lands which are secured to enterprises, establishments and organisations for that very purpose or from special purpose lands in their use, given appropriate permission, or from the state reserve by permission of local authorities.

Plots may be allotted to workers residing on the territory of collective farms from the unoccupied house-and-garden plots of these collective farms by decision of general meetings of their members or their duly authorised administrative organs.

Land allotted to workers must be used in accordance with its designation and with the application of personal labour and the labour of members of the family, without hired labour. A land plot is usually allotted to the worker himself, and he is the subject of the right of land tenure.

The dwelling-house and farm buildings erected on the plot, and also the farm produce obtained on it, are the personal property of the toil tenant, who has the right to possess cattle and poultry within the limits allowed by law,

Land tenure of workers residing in rural areas is regulated by the Decision of the Council of People's Commissars of the U.S.S.R. and the Central Committee of the Communist Party (Bolsheviks) of July 28, 1939, "On the House-and-Garden Plots of Workers, Village Teachers, Agronomists and Other Non-Members of Collective Farms Residing in Rural Areas", and several other decisions of the Soviet Government supplementing and developing the above decision.

Land tenure of workers in the towns is regulated mainly by the Decree of the Presidium of the U.S.S.R. Supreme Soviet of August 26, 1948, "On the Right of Citizens to Purchase and Build Individual Dwelling-Houses", and the decision of the Council of Ministers of the U.S.S.R. of August 26, 1948 on the procedure governing application of the said decree.

Individual farmers in the U.S.S.R. are allotted land free of charge for an indefinite period to run a small private farm, allowed by Article 9 of the Constitution of the U.S.S.R., based on their personal labour and excluding exploitation of the labour of others or derivation of unearned income.

In the U.S.S.R. this type of farm is on the way out because the overwhelming majority of peasants have voluntarily joined the collective farms and are not engaged in individual farming, but in collective, socialist agriculture.

The size of plots allotted to individual farmers and the procedure governing allotment are specified in the decision of the Central Committee of the Communist Party (Bolsheviks) and the Council of People's Commissars of the U.S.S.R. of May 27, 1939.

4. LEGAL STATUS OF SPECIAL PURPOSE LANDS

The term "special purpose lands" used in the Basic Principles of Land Tenure and Land Management (LTLM) of 1928 means lands allotted to state establishments and enterprises and mass organisations for their specific non-

agricultural purposes (transport, mining, factories, schools, health resorts, military needs, etc.).

In contrast to other categories of land within the state land fund, special purpose lands are not only used but also administered by state enterprises, establishments and organisations (LTLM 55).

Special purpose lands may be used only for their designated purpose. In view of this, almost every land act covering allotment of such lands to the various agencies determines their structure, number, and purposes for which they may be used. In some cases even the size of the lands allotted is determined by law.

As a rule, special purpose lands are secured for use for an indefinite period free of charge. When the need for which these lands were allotted disappears, they revert to the appropriate land or urban authorities (LTLM 56).

Minerals may be extracted only by duly authorised state enterprises and organisations. They must be in possession of the deed of allotment of land, and also a deed of mining, which define their rights and obligations as the users of land and the minerals secured to them.

In some cases, precisely specified in the law, unoccupied special purpose lands may also be used for agricultural purposes (grazing, haymaking, sowing and providing workers with allotments). But in any event they remain special purpose lands, and their use for agricultural purposes is temporary, until such time as they are required for use as special purpose lands. The law restricts the use of special purpose lands for agricultural purposes and defines the procedures and terms governing such use in every single instance.

5. LEGAL STATUS OF URBAN LANDS

Urban lands are lands within city limits, excepting special purpose lands (LTLM 57). Urban lands differ in economic designation and fall into three categories, depending on the purpose for which they are used:

a) settlement lands, or the "urban settlement area", as Article 9 of the Urban Land Regulations approved by the Decision of the All-Russian Central Executive Committee and the Council of People's Commissars of the R.S.F.S.R. of April 13, 1925 calls them, which are lands including actually built-up plots and areas newly designated as construction sites;

b) land in general use, including public parks, gardens, squares, streets, roads, thoroughfares, embankments, etc.;

c) urban-farm land, i.e., lands used for agricultural purposes, and also peateries, quarries and land plots not included in the categories of settlement land or land in general use.

According to the Urban Land Regulations, urban land, including settlement land, may be used by the municipal authorities; allotted to state establishments, enterprises, mass and co-operative organisations, and also to private persons; or remain in public use free of charge (Art. 5).

The law does not determine the size of land plots allotted for the construction of administrative buildings, cultural and educational establishments, and technical facilities. The law determines the size of plots allotted in the towns for individual housing construction.

In accordance with Article 14 of the Urban Land Regulations, city Executive Committees, in allotting plots for construction of enterprises, must in every concrete instance establish their size with an eye to economic, sanitary, and other urban features.

There are different procedures governing allotment of urban land plots, depending on the tenant and the type of construction.

In accordance with the Decision of the All-Russian Central Executive Committee and the Council of People's Commissars of the R.S.F.S.R. of August 1, 1932, "On the Allotment to Establishments, Enterprises and Organisa-

tions of the Social Sector of Plots of Land for Building Tenancy for an Unlimited Time", state and public enterprises, establishments and organisations are entitled to receive plots for capital construction free of charge and for an unlimited time (Art. 1).

For temporary structures urban land plots are allotted for a definite period of time, i.e., for the period in which such structures are in use.

In contrast to settlement lands, lands in general use are not secured to individual land tenants, but are in the free and general use of all citizens. Besides, in respect of settlement lands, city Soviets mainly exercise supervision over their correct use, but in respect of lands in general use, they are also obliged to exercise the functions of direct administration, because the proper maintenance of lands in general use is one of the main duties of city Soviets.

Urban farm land is ordinarily used by Executive Committees of city Soviets of Working People's Deputies to obtain and manufacture building materials and set up all manner of enterprises (state farms, fruit and vegetable farms, and landscape gardening enterprises). Unused urban farm lands are allotted by the city Soviets for use by various state, co-operative and other enterprises and organisations, and private persons.

The laws in force give the city Soviets the right to allot urban farm lands for gardening.

Urban farm lands used for agricultural purposes are allotted to establishments and organisations and also to private persons free of charge and under contract, for an unlimited time or for a definite period.

Article 26 of the Urban Land Regulations says that the municipal agencies of the city Soviets, in allotting land, must be guided mainly by considerations of most expedient use, and also by the interests of the inhabitants of towns enabling them to improve their material welfare by individual cultivation of land plots.

6. LEGAL STATUS OF LANDS UNDER FORESTS AND WATERS

The forests and waters of the U.S.S.R. are specific objects of the right of state ownership. Their use in the national economy is highly varied. The forests yield building materials, chemical raw materials and fuel, protect fields and waters from droughts and shallowing, etc.; they offer game, berries, nuts and mushrooms, and are places of rest for the people. Forests also serve as protective belts purifying the air of towns and industrial centres.

Waters also satisfy a variety of needs. They are a source of drinking water, irrigation, and motive power for various engines; they are used for communications, fish-breeding and fisheries, etc.

This variety of uses led to the establishment of a special legal status for the country's forest and water resources, providing for their most expedient use.

In the U.S.S.R. the forests are under the authority of the State Planning Committee and its local forestry agencies, which assign the use of forests to state, mass and co-operative enterprises, establishments and organisations, in the manner provided for by law.

The legal status of forests depends mainly on their economic designation.

In terms of structure and economic designation forests in the Soviet Union fall into three groups.

Group One includes field-protective and soil-protective forests of state reserves, forests of the green belts around cities, industrial centres, and other populated localities, health-resort forests, and also forests along the banks of rivers and reservoirs.

Land under these forests, and the plantings on it may be in the use of various state, co-operative and other organisations, establishments and enterprises.

Industrial felling of timber in *Group One* forests is prohibited. They are subject only to improvement cutting and sanitary felling.

Group Two forests include those of the eastern, south-eastern and central parts of the European territory of the Soviet Union, of the Southern and Central Urals, and also of the Central Asian Republics. There is a shortage of forests in these areas and so the main task there is the preservation of existing forests and afforestation. The bulk of land in the above-listed areas does not consist of land under forests, but of land set aside for afforestation. Industrial felling of timber in the forests of this group is restricted.

Group Three forests include areas in the rest of the Soviet Union where forests abound and are mainly used for industrial purposes. There felling is carried out in line with the needs of the national economy.

In contrast to the first and second groups, almost every type of auxiliary tenure is allowed on lands under the forests of this group (pasturing, haymaking, hunting, collection of wild nuts, berries, mushrooms, etc.).

Under the laws in force auxiliary types of land tenure in the forests are as a rule free of charge.

Forests on the territory of state farms, collective farms and other land tenants are secured to them, and, as has been said, are in their use free of charge and for an unlimited time. Collective-farm forests are classed in a special group.

Thus, the legal status of lands under forests or intended for afforestation depends entirely on the economic designation of these forests and is actually determined by the legal status of the latter.

The legal status of waters and the legal forms of economic exploitation of water resources depend above all on their economic designation and on their potential uses in the national economy.

The water resources of the U.S.S.R. include seas, rivers, lakes, glaciers, and subsoil waters. There is also the following classification of water resources adopted in legislation:

- a) surface waters and subsoil waters;
- b) the waters of natural and artificial sources;
- c) the waters of land-locked reservoirs and running waters.

This classification of water sources is of great economic and juridical importance, for it determines the rights and obligations of water users and the range of these rights. Thus, the waters of land-locked reservoirs on the tract of a land tenant are secured to him, and he enjoys the unimpeded use of these waters. The matter of running waters is settled differently. They are not secured to land tenants and rights to them are restricted. Land tenants are entitled to use waters flowing through the plots in their use, without violating the right to these waters of neighbouring land tenants or the general legal status of these waters.

Proceeding from the economic designation of waters and their use in the interests of the national economy, Soviet law also classifies water resources as follows: a) navigable and non-navigable; b) logging and non-logging; c) industrial and non-industrial; d) irrigating and draining; e) protected and not subject to protection.

In view of the fact that a water source may be used simultaneously for different economic purposes, such as navigation, logging, irrigation, fishery, etc., its legal status depends on the sum total of its economic and legal characteristics.

Such water sources are not ordinarily secured to anyone, but are simultaneously under the authority of various state bodies, which use them for different economic needs.

7. JURISDICTION IN LAND MANAGEMENT AND LAND DISPUTES

Broadly, land management is a system of state acts ensuring the most effective and expedient use of the land area for the development of the national economy and its branches, above all agriculture, on socialist lines.

The acts of land management agencies are either external or internal. External land management is usually connected with the assignment of lands to new tenants, the specification or alteration of external boundaries, or withdrawal of a part of the land from one land tenant and its transfer to another for more important state needs. Internal land management deals mainly with the exploitation of plots assigned to tenants, which are improved in line with their designated purpose. Hence, internal land management is rather more economic than juridical. Internal land management on state and collective farms establishes the proper crop rotation, sets aside farm land (arable, pasture, grass lands, etc.), assigns plots for households and vegetable gardens to workers of state farms and members of collective farms, for construction of dwelling-houses, farm buildings, service structures, etc.

Land management is highly important in the settlement of disputes involving land. In the U.S.S.R., land disputes are entirely different from those in any other country where land is private property. First, in the U.S.S.R. there can be no dispute over title to land; disputes involve the right of land tenure, either in connection with violation of the rights of the land tenant or damage to his farm, or in disputes between state organs and land tenants on the allotment or withdrawal of plots.

But these are not disputes in the usual sense of the word; they are mostly complaints filed by land tenants against violation of their right of land tenure by other land tenants or against the acts of state organs exercising the functions of disposal or administration of land, and in charge of the allotment and withdrawal of lands. That is why such disputes are not cognisable by the courts and are examined in administrative proceedings by local state organs.

In accordance with the laws in force, land disputes may be examined by courts only when they arise between owners of dwelling-houses in towns or are connected with

violations by individual builders of dwelling-houses of the building rights established for them, or when material damage is inflicted on land tenants, i.e., when property rights are also invaded.

Most land disputes are resolved in the process of land management, especially when this involves the specification of external boundaries of plots or removal of inconveniences in land tenure.

The Soviet state safeguards the established rights of land tenants and combats all violations.

Chapter Seven

COLLECTIVE-FARM LAW

1. CONCEPT

Collective-farm law regulates social relations arising from the establishment and operation of collective farms as large-scale socialist agricultural enterprises. It is an independent branch of Soviet socialist law.

It did not emerge as an independent branch of law at once, but only when the collective-farm system won out and collective farming became the principal and prevailing form of peasant economy in the countryside. However, the rules of collective-farm law began to make their appearance from the inception of Soviet power, with the first collective farms set up by the peasants themselves immediately after the Great October Socialist Revolution.

Collective-farm law and the social relations it regulates are based on the principles of collective farming formulated in Lenin's co-operative plan and also in decisions of the Communist Party of the Soviet Union in the process of socialist construction in the countryside.

These principles are as follows: membership of the collective farms is on a voluntary basis; the managing organs are elective and accountable to the members; collective farmers have equal rights; they are offered material incentives in their labour; and a correct balance is struck between social and personal interests.

These principles are reflected and incorporated in the Constitution of the U.S.S.R., the main source of collective-farm law. On these principles rest the *Model Rules of the Agricultural Artel of 1935* and all the rules of the individual collective farms.

The Model Rules are the key law of collective-farm activities, and determine the objectives, tasks, and working methods of collective farms, the organisation of labour and the system of remuneration, as well as the rights and duties of members. The Model Rules were adopted by the Second All-Union Congress of Collective-Farm Shock Workers, and approved by the Council of People's Commissars of the U.S.S.R. and the Central Committee of the Communist Party (Bolsheviks) on February 17, 1935.

Collective-farm law includes the following legal institutions: membership; right of collective-farm property; organisation of labour and payment for work; distribution of collective-farm income; management; collective-farm household, etc. The system of collective-farm law is structured accordingly. It includes also relations arising from the state guidance of collective farms, and from contracts between repair and service stations and collective farms, and between machine and tractor stations and collective farms where such are still in operation.

The need for a special branch of law within the system of Soviet socialist law, namely, collective-farm law, flows from the special sphere of relations connected with the establishment and operation of collective farms, the rules of law regulating these relations, and also the specific juridical collective-farm institutions.

Thus, collective-farm law is a branch of Soviet socialist law regulating relations in the establishment and operation of collective farms, and their guidance by the state, and also relations between the collective farms and their members and households, with the object of reinforcing the

organisational and economic system of the collective farms, and ensuring through this system the advance of the Soviet peasantry to communism.

2. FORMS OF COLLECTIVE FARMING

Soviet legislation recognises three forms of collective farming, which differ from each other in the extent to which the means of production of their members are collectivised, namely: a) agricultural association; b) agricultural artel; and c) agricultural commune.

The *agricultural association* is the elementary form of collective farming. Its members pool their allotments into a single tract of land which they cultivate by collective labour. Draught and productive animals, farming implements, dwelling-houses, farm buildings and other instruments and means of production are not collectivised and remain in the personal ownership of the members.

These associations may have collective property (draught animals and bloodstock, farming machinery and implements), purchased and paid for out of the entrance fees of their members, special deductions from the annual income of the associations, and also credits received from the state.

The agricultural association is a past stage of collective-farm development in the U.S.S.R. It gave a visual demonstration of the advantages of collective land tenure, cultivation and farming, thereby facilitating transition to the agricultural artel, the higher form of farming.

The *agricultural artel* (collective farm) is now the only and the principal form of producers' co-operative among the peasants (the term "collective farm" is used here as identical with the term "agricultural artel").

Land tenure, the basic instruments and means of production, and labour are collectivised in collective farms. Dwelling-houses, productive livestock, poultry and minor

farming implements are not collectivised and remain the personal property of the collective-farm household.

Thus, the collective farm is the type of co-operative socialist economy which at the present stage creates the best possibilities of applying the advantages of large-scale farming and introducing modern machinery and agronomic practices. It is a happy combination of the personal interests of the farmers, the interests of the farm and society as a whole.

The *agricultural commune* presupposes an even higher stage of collectivisation, including land tenure, the instruments and means of production, and labour. Agricultural communes can emerge only on the basis of higher technology.

At present, collective-farm law regulates social relations arising and developing only within the collective farms, as the single form of collective farming in the U.S.S.R.

3. MEMBERSHIP

In accordance with the Constitution of the U.S.S.R., all citizens, regardless of race, nationality or creed, who have attained the age of 16, have the right to be members of collective farms.

Prospective members file applications with the board. They are then entered in a list submitted by the board to a general meeting of the collective farmers or a meeting of their representatives, which makes the final decision.

In accordance with the Model Rules, new members must surrender all their farm land, the basic instruments and means of production, such as draught animals, farming implements (plough, sower, harrow, thresher, mower), seed stocks, and fodder necessary to maintain the collectivised cattle, as well as farm buildings for the conduct of the collective farm, and all undertakings for the processing of farm produce. From one-quarter to one-half of the value of

the collectivised property goes to form the non-distributable fund of the collective farm; the remaining portion of the property goes into the share fund.

A member admitted to the collective farm pays an entrance fee of from 2 to 4 rubles per household, which also goes into the non-distributable fund (Model Rules 9).

Children of collective farmers who attain the age of 16 are entered by the board in the list of new members, which is subsequently endorsed by a general meeting of the members or a meeting of representatives. Persons who were not previously engaged in farming pay only the entrance fee established by the rules of the given collective farm.

The Model Rules guarantee equality of rights and obligations of all members.

Members have equal right to work on the collective farm and to receive compensation for their work, depending on its quantity and quality, i.e., to receive a part of the collective income in cash and in kind in accordance with the number of work-day units credited to each.

Members have equal right to security in old age and in the event of temporary disability for work or disablement. Some collective farms give material assistance to such members either from a special aid fund or by crediting them with a certain number of work-day units and paying them accordingly in cash and in kind within the limits established by the general meeting.

Members are equally entitled to take part in the management of collective-farm affairs. They have equal right to elect and be elected to the managing organs.

Members are equally entitled to have a subsidiary farm on their house-and-garden plot.

It is the duty of members to be industrious, to take good care of the collective property, abide by the rules and regulations, and to observe labour discipline.

Members are equally liable for violating the working rules and failing to fulfil their duties provided for by the Model Rules and collective-farm legislation.

The 1935 Model Rules of the Agricultural Artel and the rules of the individual collective farms specify the grounds on which membership may be terminated. These include voluntary withdrawal, shift to another collective farm, departure for work in industry, and expulsion. The latter, an extraordinary measure, is applied only in exceptional cases.

4. STATE GUIDANCE

Guidance of the collective farms by the state is indispensable to their organisational and economic growth. Collective farming became possible in the U.S.S.R. because the state gave it a great deal of assistance in terms of organisation, materials, and money.

The collective-farm system triumphed with the implementation of Lenin's co-operative plan, which provides for an alliance of the working class and the bulk of the peasantry, with the working class as the leader.

As socialist forms of agriculture are consolidated, the state gives more and more guidance to the collective farms, for they are large-scale agricultural enterprises, which must farm to plan, using advanced agronomic techniques and complex machinery; they must be staffed with alert executives and farm specialists.

The methods and forms of guidance of the collective farms used by the state and its organs of power and administration differ from those used with regard to state enterprises. As a rule, the state guides the collective farms through their organs of management and aims to stimulate the initiative of their members in farming and management on a broadly democratic basis. These methods include, first, the issue of normative acts; second, approval of decisions taken by the collective farms when these pertain to the use of land and other state-owned means of production, and also to their fulfilment of obligations to the state or

planned assignments; third, day-by-day assistance in organisation, finance and production, interpretation of modern agronomic techniques, and supply of farm specialists.

Among the agencies directly engaged in the guidance of the collective farms are territorial and regional administrations of agriculture.

Until February 21, 1961, collective farms were directed by the Ministry of Agriculture of the U.S.S.R. and its local agencies. But with the extension of the powers of the Union Republics many matters relating to finance, supply and planning were transferred to the Republics, while the State Planning Committee of the U.S.S.R. was charged with the distribution of investments, machinery, mineral fertilisers, and other material resources among the Republics.

The Ministry of Agriculture, which used to distribute farm machinery and run repair services, failed to take account of applications from collective and state farms with the result that the localities were often supplied with machinery without regard for actual demand. In view of this, the Central Committee of the C.P.S.U. and the Council of Ministers of the U.S.S.R. decided to set up an Agricultural Machinery and Supplies Board, charged with the sale of farm machinery, spares, mineral fertilisers and other material and technical resources, the running of repair services and the use of machinery by collective and state farms. Thus, the Ministry of Agriculture was also divested of the functions of planning, accounting, stocktaking, financing, providing material and technical supplies, and repairing farm machinery. There arose the need, therefore, of reorganising the Ministry of Agriculture, and this was done by a decision of the Central Committee of the C.P.S.U. and the U.S.S.R. Council of Ministers of February 21, 1961. Its main function now is to interpret scientific accomplishments and progressive methods for agriculture.

Another important factor in the past was the state-owned machine and tractor stations (MTS). They held the bulk

of the machinery which was used to cultivate the collective-farm fields under contracts with the farms. The MTS were long the state's fulcra in collective farming. Theirs was an historic role in the collectivisation of agriculture and the consolidation of the socialist system of economy in the countryside, for they organised farming on a large scale and led technical progress. They helped the collective farms to grow into strong economic units, trained tractor drivers, combine operators and other farm specialists. It was good sense to keep the machinery at the MTS when the country had a great many collective farms with small land tracts, which were unable to use the complex farming machinery efficiently enough without the help of the machine and tractor stations.

After the amalgamation of the collective farms in 1950 their land tracts were increased many times over. Some collective farms now have up to 20,000 hectares of land secured to them. They are much stronger economically and have many more specialists. The state has also improved its guidance of the collective farms. Under the circumstances there was no longer any need to have the machine and tractor stations operate as organisers of collective farming: the collective farms are now quite capable of making more efficient use of complex farming machinery on their fields.

As a consequence, the law adopted by the U.S.S.R. Supreme Soviet on March 31, 1958 and the Decision of the C.P.S.U. Central Committee and the U.S.S.R. Council of Ministers of April 18, 1958, "On the Further Development of the Collective-Farm System and Reorganisation of Machine and Tractor Stations", gave the collective farms the right to purchase tractors, harvester combines and other farming machines from the machine and tractor stations, which were reorganised into repair and service stations. The new Agricultural Machinery and Supplies Board will also organise repair services and the use of machinery.

5. RIGHT OF COLLECTIVE-FARM OWNERSHIP

Lenin described the role of co-operatives under the Soviet authority as follows: "From the moment the proletariat wins state power, from the moment the proletarian state power begins the systematic building of the socialist order, there is a fundamental change in the standing of the co-operatives. Here quantity turns into quality. A co-operative on the scale of a society in which land is socialised and factories and plants are nationalised is socialism."¹

The socialist nature of collective-farm property is determined by the relations of production within the Soviet system, and by that system itself.

The collective farms conduct their collective economy on land, which is the property of the state. The state provides the farms with all the necessary farming machines, gives them financial assistance and safeguards collective-farm property, thereby promoting the economic growth and accumulation of their property.

The Constitution of the U.S.S.R., the 1935 Model Rules of the Agricultural Artel and other collective-farm legislation define the range of objects of collective-farm property. This depends on the nature of the collective farm as a co-operative of peasants and the tasks it sets itself as an enterprise in the development of large-scale collective farming.

Article 7 of the Constitution of the U.S.S.R. says that the common enterprises with their livestock and implements, the produce, as well as their common buildings, constitute the socialist property of the collective farms. This does not exhaust the range of objects of collective-farm property, for the Constitution lists only the principal objects.

The chief of these are the common enterprises of the collective farms with their livestock and implements, including the basic means of labour, such as draught animals

¹ V. I. Lenin, *Collected Works*, 4th Russ. ed., Vol. 27, p. 189.

and productive livestock, tractors, harvester combines, motor cars and various farming machines and implements.

Before 1958, collective farms had the use of farming machinery under contract as a service run by machine and tractor stations: these farms were still unable to make efficient use of the machines.

Considering the level of economy and organisation attained in the collective farms, the U.S.S.R. Supreme Soviet in March 1958 adopted a law on the reorganisation of machine and tractor stations into repair and service stations.

In accordance with Article 2 of the law "On the Further Development of the Collective-Farm System and Reorganisation of Machine and Tractor Stations", tractors, harvester combines, and other farm machinery belonging to the machine and tractor stations were sold to the collective farms.

Under the laws in force the collective farms own the common enterprises turning out various farm products; enterprises processing agricultural products (creameries, wineries, canning factories, cheese plants, mills, hulling mills, etc.); enterprises catering for the farms' production needs (electric power stations and installations, brick and tile factories, slag-block factories, repair shops, garages, smithies); social amenities (bath-houses, laundries, bakeries, canteens, etc.).

Electric power stations, brick and tile factories, irrigation and melioration structures, and processing plants are now often built by collective farms on a share basis, and are objects of inter-collective-farm property.

The common buildings are likewise objects of collective-farm property. These include farm buildings and structures (field stations, roofed threshing floors, granaries, sheds, cow-houses, pigsties, sheep-pens, etc.), and many other buildings for cultural and other public services, such as sanatoriums, holiday homes, clubs, hospitals, kindergartens, nurseries, radio stations, playgrounds, etc. There are now in

the villages almost 115,000 clubs, over 111,000 libraries, 61,000 cinemas, etc.

Collective-farm property includes orchards, vineyards, tea plantations, berry bushes, decorative and field-protective plantings.

The collective farms own everything they produce, such as grain, meat, butter, vegetables, beets, flax, cotton, fruits, and also the products of the processing and subsidiary industries working natural resources.

Cash assets are an important object of collective-farm property. In 1960, the cash income of collective farms totalled almost 13,000 million rubles.

Such, in general, is the range of objects of right in collective-farm property. It must be emphasised that as a socialist undertaking, the collective farm is not merely entitled, but is obligated to own certain objects required for its normal economic operation, in order to ensure the most efficient use of the land—its principal asset—secured to it in perpetuity, and also to satisfy the needs of its members.

From the standpoint of economy or law property owned by the collective farm is not a uniform mass but is divided into various parts, depending on their role in production.

Like the property of state enterprises, collective-farm property is classed—depending on its designation and use in collective production—as means of production and its products; basic and circulating assets; and various production and non-production funds.

The most general distinction, that of basic assets and circulating assets, produces important juridical effects.

The collective-farm property comprising its basic and circulating assets is divided into funds, established by decision of the general meeting in conformity with the rules.

At present the following funds are in use: non-distributable and share; basic and reserve seed; fodder and food; cultural; in aid of the needy and disabled; circulating cash

assets; payment of labour and monthly advances to collective farmers, etc.

The non-distributable fund makes for economic stability in the collective farm and its consolidation and development as a socialist enterprise. The manner of its establishment and replenishment is described in Articles 10 and 12 of the Model Rules of the Agricultural Artel and other special laws.

The non-distributable fund emerges with the establishment of the collective farm. It consists of a part of the value of the collectively-owned property of the members, entrance fees and annual deductions from the farm's cash income, in accordance with Article 12 of the Model Rules.

Into the non-distributable fund also goes the value of the animal increase; structures erected and purchased; means of production collectively manufactured by the members for the use of the farm or purchased by it in civil transactions; and also cash assets and the value of property received from the state.

A distinctive feature of the non-distributable fund is that, unlike other funds, it may not diminish, but must grow all the time. In early 1959, non-distributable funds were valued at 12,410 million rubles, 26 times more than in 1932. Under no circumstances are the non-distributable assets shared out among the members of the farm. All proceeds from the sale of property listed in the non-distributable fund go back to that fund.

The collective farm may use non-distributable assets only for capital outlays in strict accordance with its rules, production plan, and estimate of revenue and expenditure approved by the general meeting.

Now, with expanding production ties between the collective farms, non-distributable assets are being used on a growing scale to erect objects which are operated not only in the interests of the collective farms, but also of socialist society. The farms jointly set up industrial, building and other economic enterprises, build electric power stations,

roads, irrigation and melioration systems, enterprises for the processing and storage of farm produce, schools, especially boarding-schools, homes for the aged, hospitals, and clubs. This results in a radical change in the role of the non-distributable assets and brings them nearer to the status of public property.

In exercising its right in property, the collective farm must above all develop its collective economy, transforming it into a large-scale, highly productive and paying enterprise.

The collective farm uses its instruments and means of production mainly through field brigades and animal farms.

In accordance with Article 14 of the Model Rules, the board, under a special instrument, secures to each field brigade and stock-breeding farm property required for the performance of work assigned to them under the production plan. The property conveyed to the brigades and farms is individually secured to each member, who is personally liable for the preservation of the property and its proper use. The brigade leader and the farm manager are responsible for the use of the property secured to the brigade or farm. Other objects of collective-farm property are used in other branches of collective farming, such as electric power stations, brick factories, subsidiary enterprises processing agricultural produce, storehouses, garages, and buildings for cultural and welfare services. Intra-collective-farm funds, which are specific types of property owned by the collective farms, are used in accordance with special procedures.

Only the collective farm itself, as a juridical person, is entitled to dispose of its property. This right is exercised through its organs: the general meeting, the meeting of representatives, and the collective-farm board, operating within the jurisdiction laid down in the rules.

The general meeting of the members—the highest managing organ—may dispose of the collective property as a whole. The general meeting confirms the plan of production

and accordingly determines the order and terms on which the various types of property are to be used. It approves the estimate of revenue and expenditure and the cash assets disbursement plan. The general meeting also determines the size of the various funds to be set aside and the amount of produce and money to be distributed per work-day unit. It discusses matters pertaining to the sale and purchase of objects of collective-farm property, etc.

The board and the chairman base their activity pertaining to the use of the collective property on the decisions of the general meeting and fulfil its instructions. They have no right to dispose of the collective property at their own discretion.

The objects of right in inter-collective-farm property may be disposed of by the farmers to the extent of their share in that property and in a manner similar to that prescribed for the disposal of all collective-farm property in their possession.

Through its agencies, the Soviet state exercises strict control over the observance of the laws governing disposal of collective-farm property, cutting short every violation of the collective-farm rules.

Collective-farm law bars attachment to satisfy judgment creditors in respect of a considerable part of collective-farm property which is required for normal production operations. Execution may not be levied on handicraft enterprises; capital construction assets; seed stocks and reserve stocks; raw materials and fuel required to run the collective-farm enterprises for a period of three months; dwelling-houses and farm buildings; livestock and implements within the limits required by the farm for the fulfilment of its production plan; unharvested crops; seed to ensure sowing in the current agricultural year; statutory quantities of fodder until the new crop; and insurance compensation due under the compulsory insurance plan. All this serves to safeguard collective-farm property.

The Seven-Year Plan for the Economic Development of the U.S.S.R. for 1959-65 sets the collective farms big tasks in the development of their economy. Together with state farms they are to increase agricultural output in order to give the people more and better food, supply industry with raw materials, and satisfy other needs of the state.

The collective farms will soon start processing the bulk of their agricultural produce. This will greatly enhance their legal capacity in respect of property, and multiply the objects of right in collective-farm property.

6. ORGANISATION AND REMUNERATION OF LABOUR

All work in the collective farm is performed by its members. Non-members may be engaged for agricultural operations only when they possess special knowledge and training (agronomists, technicians, etc.). The hiring of outside casual labour is permitted only when urgent jobs cannot be performed in time by the members and also for building.

The annual or seasonal work on the farm is determined by its annual plan of production, providing for all operations in the various branches of farming and the labour force required to perform them. Thus, the organisation of labour is based on its plan of production.

In accordance with the Decision of the C.P.S.U. Central Committee and the U.S.S.R. Council of Ministers of March 9, 1955, "On Changes in Agricultural Planning", plans are now drawn up by the members themselves with an eye to the specific features of their collective farming. They plan for the most efficient use of the land secured to their farm and for the greatest possible yields at minimum per unit costs in terms of labour and material.

To fulfil the production plan, the board organises from among the members permanent production brigades which are the principal form of labour organisation. Farms are

also organised in stock-breeding. Field brigades working on row crops are divided into teams.

A plot within the crop rotation area is secured to each brigade and team together with the necessary farm buildings, machinery, implements and draught animals. Productive cattle is secured to each farm.

Depending on its economic level, each collective farm also organises brigades for vegetable growing, gardening, fodder supply, building, etc. Many farms have complex field-and-tractor brigades to perform all operations in growing crops.

The board appoints members to lead the brigades, teams and farms, who are vested with appropriate rights and are responsible for the work of these producing units and their fulfilment of planned assignments.

Remuneration is on a piece-work basis. There are standards of output and rates of remuneration in terms of work-day units for each type of job. These are worked out by the board on the basis of model output standards and remuneration rates, and of the state of draught animals, machinery and soil, and also skills of members required for the performance of each job. These standards and rates are approved by a general meeting of the farmers.

In accordance with Article 14 of the Model Rules, work is distributed among the members of the brigade by its leader, who must assign to each the right job for his skill, experience, and physical fitness.

Not less than once a week, the brigade leader computes the work done by each member and in accordance with the established remuneration rates enters the number of credited work-day units in the work-record book of each member.

Every month the board displays lists of the members, showing the number of work-day units credited to each during the preceding month.

In accordance with current laws, members who overfulfil their planned assignments for crop yield are credited

with an additional number of work-day units, and are cited for Government awards for outstanding accomplishments. The practice is similar in animal husbandry.

In order to ensure participation of every able-bodied member in collective farming, the general meeting establishes the minimum of work-day units to be performed by each member in the agricultural seasons in the course of the year.

Remuneration for work-day units is in cash and in kind, the amount being determined by a decision of the general meeting depending on the farm's income. Apart from the basic remuneration of labour, farmers receive additional payments as an extra incentive for overfulfilling planned assignments undertaken by the farm.

In contrast to the basic remuneration, extras are paid as a definite portion in cash and in kind of the farm's crops, animal products or cash income in excess of the plan.

The Decision of the C.P.S.U. Central Committee and the U.S.S.R. Council of Ministers, "On Monthly Advance Payments to Collective Farmers, and Additional Remuneration of Labour in the Collective Farms", of March 6, 1956 leaves it to the farmers themselves to work out payment systems and the amount of additional remuneration.

Under this decision the collective farmers are paid during the year advances in cash and in kind on account of the work-day units to their credit. The final settlement of accounts takes place at the end of the agricultural year after the work-day unit is determined in terms of cash and produce. Disputes arising from the establishment of standards of output and rates of payment in work-day units, the crediting of work-day units, and also the reckoning of the cash and produce due per work-day unit are settled by the board or general meeting.

At present many economically strong farms have guaranteed cash payment plans and pay monthly wages depending on the number of work-day units credited to each

member. This is a more progressive payment plan. Some farms pay their members without computing work-day units—as wage workers are paid on state farms: at fixed cash rates in accordance with the quantity and quality of work done. This system is gaining ground.

7. DISTRIBUTION OF INCOME

Distribution of collective-farm income in cash and in kind is defined in the Model Rules and collective-farm laws.

Out of the crops gathered and the livestock raised the farm first of all sells its produce to the state in quantities specified in the planned assignment approved for the given farm, and at prices fixed by the state.

In accordance with the Decision of the U.S.S.R. Council of Ministers of June 30, 1958, "On the Abolition of Compulsory Deliveries and Payments in Kind for the Work of Machine and Tractor Stations, and the New System, Prices and Terms of Purchasing Agricultural Products", farm products are purchased by the state in the collective farms at prices and in the order prescribed by the above decision. The volume of state purchases of farm produce depends on the area of land secured to each farm and its agricultural profile. The rest of the farm produce goes to set up and replenish the farm's collective assets and to pay for work-day units.

The cash income is distributed in the same way. The farm first fulfils its cash obligations to the state, i.e., it pays the state the statutory income tax and insurance premiums; repays cash loans received from the state which fall due in the current year; settles accounts under its contracts. It then assigns money to cover current production and administrative and other expenses, such as the training of personnel, maintenance of kindergartens and nurseries, clubs, etc. Finally an amount fixed by the rules is paid into the non-distributable fund.

The rest of the cash income is distributed among members in accordance with work-day units. Where cash payment plans are in operation, special cash funds are set up to pay for the labour of members. These are made up of the proceeds of sale of the produce remaining in the farm (formerly distributed in kind) and receipts from other sources.

8. MANAGEMENT

The business of the farm is managed in accordance with the principles of socialist democracy laid down in the Constitution of the U.S.S.R. and reflected in the rules of the farms.

These principles are as follows: one, members decide all vital matters of their collective work; two, executive and auditing organs are elective and accountable to their members as constituted in the general meeting, their highest managing organ; three, members have the right to discuss and criticise the work of the executive, and propose its re-election before the expiry of its term, if it is unable to cope with its duties; and four, the farm's managing organs are elected for a definite term and may be replaced.

The board is the standing executive; and the auditing committee is the organ of control.

In many collective farms, the general meeting is supplemented by a meeting of representatives to handle at short notice certain questions within the jurisdiction of the general meeting, for it is no easy matter to call a general meeting in an amalgamated farm.

The jurisdiction of management is defined in Articles 19-25 of the Model Rules.

The *general meeting* elects the chairman and the members of the board and also the auditing committee; admits new members and expels members from the farm; confirms the long-range and annual production and financial plans, the building programme, the standards of output

and the rates of payment; the annual report of the board, which is always accompanied by the opinion of the auditing committee, the reports of the board on the most important agricultural undertakings, the size of various funds and the amount of produce and money to be distributed per work-day unit. It also fixes the compulsory minimum of work-day units for every able-bodied member and the cash payments plan; adopts the rules and amendments and addenda to them, and also the working regulations.

Decisions of the board on these matters are null and void unless confirmed by the general meeting.

A quorum for the general meeting is not less than one-half of the membership of the farm; this quorum may decide all matters except the adoption of the rules and amendments and addenda to them, election of the board and the chairman, expulsion of members, and the size of various funds. For resolutions upon these matters, the presence at the general meeting of not less than two-thirds of the membership is required. Resolutions are adopted by a majority and voting is by a show of hands.

Where the general meeting is supplemented by a meeting of representatives, the latter handles almost all matters placed by the Model Rules within the jurisdiction of the general meeting, excepting matters within its exclusive jurisdiction and requiring a qualified majority.

The powers of the general meeting and the meeting of representatives are delineated by the farms in their rules.

The *meeting of representatives* is elected by the members either at a general meeting or at brigade meetings in accordance with the norms of representation established in each farm. Thus, the Rules of the collective farm in the village of Ivanovka, Vinnitsa Region of the Ukrainian Republic, say that representatives are persons elected for a period of one year by every five members at meetings in brigades and on farms. In the event a representative does not live up to the trust placed in him by the collective farm-

ers, he may be recalled at any time in the same order. Meetings of representatives are convened by the board and their decisions are valid when adopted by no less than two-thirds of the representatives. Their decisions are binding on the members of the board, but may be cancelled by a general meeting.

The *board*, as the executive, handles all matters connected with the day-to-day activity of the farm, arising from the decisions of the general meeting or the meeting of representatives. The powers of the board are very extensive and are not easily given legal definition. As a consequence, the Model Rules, without enumerating all the matters within the competence of the board, merely say that it is elected to run the business of the farm. The board, being an executive organ, is not entitled to settle matters falling within the jurisdiction of the general meeting or the meeting of representatives.

The board is elected for a term of two years and consists of from five to nine members of the given farm. At present, with the amalgamation of the collective farms, boards in many of them are much bigger. Upon the expiry of the said period, the board must render an account to the general meeting concerning its work, and is then re-elected.

In the solution of questions the board operates as a collective organ and at its meetings adopts decisions by a majority. Its decisions may be reversed by the meeting of representatives or by the general meeting.

The *chairman* is an executive who is also the chairman of the board. He is elected by the general meeting for a period of two years. A chairman who fails to cope with his duties may be recalled before the expiry of that period by a resolution of the general meeting.

Without defining the full scope of the chairman's powers, Article 22 of the Model Rules states that he is elected for the discharge of the day-to-day direction of the farm and its brigades, and the day-to-day checking on the

execution of the board's decisions. That is an indication of his powers. He manages the business of the collective farm and sees that the board's decisions are carried out. He is directly responsible for safeguarding the property of the farm and fulfilment of its obligations to the state. He represents the farm in civil legal relations and in its name concludes various civil legal transactions provided for by the production and financial plans. His assistant, the vice-chairman, is also elected by the board from among its members.

Apart from these officers, the board, on the recommendation of the chairman, also appoints for a term of not less than two years field-brigade leaders and managers of stock-breeding farms from among the more experienced farmers. The board appoints from among the members (or hires from outside) an accountant (or book-keeper), who keeps the accounts and records of property in accordance with the prescribed forms and is subordinate to the board and the chairman.

The accountant has no right to dispose of the funds of the farm independently, to make advance payments or to expend the stocks of produce. Such right belongs only to the board and the chairman. All orders for payment are signed by the chairman, or the vice-chairman, and the accountant.

The *auditing committee* verifies all the economic and financial activities of the board, i.e., it ascertains whether all revenues in money and in kind are duly credited to the farm on the books, whether the procedure prescribed by the rules for expenditure is duly followed, whether the property of the farm is kept adequately safe, etc. It also verifies how the farm meets its obligations to the state, whether it pays its debts and collects from its debtors.

The auditing committee also carefully ascertains how the farm settles accounts with its members, and brings to light any case of inaccurate crediting of work-day units, any delay in the calculation of payment for work-day

units, or any other violation of the interests of the farm or its members.

The auditing committee is elected by the general meeting for the same period as the board, and audits the accounts four times a year. It is responsible for its activities to the general meeting, which hears reports of its work after the account of the board.

9. THE COLLECTIVE-FARM HOUSEHOLD

The household consists of farmers and members of their families with a common subsidiary farm on their plot as a supplement to the basic earnings of the adult members of the household working in the collective farm. That is why the household is a form of individual husbandry of collective farmers. Each household is registered at the rural Soviet.

Article 2 of the Model Rules says that "a small tract of land shall be allocated from the collectivised land holdings for the individual use of each collective-farm household in the form of a house-and-garden plot.

"The size of the plots assigned for individual use by collective-farm households (exclusive of the site of the house) may vary from one-quarter hectare¹ to one-half hectare, and in certain districts to one hectare, depending upon regional and district conditions...."

The size of the plots is, in accordance with the Decision of the C.P.S.U. Central Committee and the U.S.S.R. Council of Ministers of March 6, 1956, determined by the members themselves when adopting their rules.

They take account of the extent to which each household participates in the collective effort. The collective farm may not increase the size of the plots at the expense of the land enclosure of the collective farm because highly

¹ One hectare equals 2.47 acres.—Ed.

mechanised farming on land held collectively is much more profitable and eventually yields many more benefits to the members.

The household has the right to use its plot to build a dwelling-house and farm buildings, which are the personal property of the household, and to lay a vegetable garden and orchard.

Article 5 of the Model Rules defines the maximum number of cattle and poultry that may be in the personal ownership of the household. In agricultural regions with developed stock-breeding, and also in the formerly semi-nomadic and nomadic stock-breeding regions, each household may have in its ownership up to 10 cows, 100 to 150 sheep and goats, an unlimited number of fowl, up to 10 horses, and from five to eight camels.

Everything the collective-farm household owns is its personal property belonging to all the members of the household by right of ownership in common. It does not consist of specified shares of the members of the household, and, as a consequence, the death of a member of the household does not result in the opening of succession to any part of the household property. The household property passes in succession only with the death of its last member and the extinction of the household.

Apart from the undivided property of the collective-farm household, it may contain the personal property of individual members of the household (as clothes, footwear and other personal belongings), and also the objects required for the pursuit of their various trades (as shoe-making instruments).

The household as a whole, as a peculiar subject of right in that property, i.e., its adult members by agreement, is entitled to dispose of the property owned in common by the household.

The members of the household designate the head of the household who enjoys equal rights with all the other members of the household and may not dispose of the com-

mon household property without the knowledge of the other members.

The household has certain obligations to the collective farm and the state. Each adult member, in the event of establishing a family of his own or departing for work in industry or to another collective farm, is entitled to claim partition or separation of the household property. Persons who have left the household and who have not worked on the common farm for more than three years are not entitled to claim partition or separation of the property.

Partition of a household is formation of two or more new households in place of the old one. In partition the property is divided among all the members, including children; in separation only the share of departing members is determined. In determining the share of the property of an adult member, account is taken of the extent of his participation in accumulating the property owned in common. The personal property of the individual members of the household is not subject to partition or separation.

Disputes involving partition or separation of the property of the household may be examined by a people's court. In the absence of a dispute the deed of partition (the inventory) is confirmed by the rural Soviet, which registers the partition of the given collective-farm household and enters the resulting changes in the list of households.

Collective-farm households will continue to exist until collective farms satisfy all the material requirements of their members.

Chapter Eight

FINANCE LAW

1. CONCEPT

Soviet finance law regulates relations arising in the process of accumulation and distribution of money assets by the state with the object of ensuring material conditions for the exercise of its principal functions.

The state's financial activity gives rise to complex and ramified relations between organs of state power and state administration of the U.S.S.R., the Union and Autonomous Republics, financial agencies, juridical persons and private persons.

In financing and extending credits to state enterprises and establishments, levying taxes and dues, financial agencies control the activity of state economic and budgetary organisations, verify fulfilment of production and financial plans and observance of the policy of strict economy. All these relations are regulated by finance law. The general part of Soviet finance law includes: 1) sources; 2) financial legal relations and financial acts; 3) the organs performing financial operations.

The special part of Soviet finance law consists of the following institutions: 1) the budget; 2) taxes, dues, and also revenues from state property; 3) organisation and regulation of the credit system; 4) organisation and regulation of the monetary system; 5) state loans; 6) organisa-

tion and regulation of state insurance; 7) financing from the budget; 8) financial control.

As with the other branches of socialist law, the Constitution of the U.S.S.R. and the Constitutions of the Union Republics are the *principal sources* of Soviet finance law. The Constitution of the U.S.S.R. lays down the jurisdiction of the Union, as represented by its higher organs of state power and state administration, in the sphere of finance, as well as the jurisdiction of local organs of power (C USSR 14, 68, 97).

The Constitutions of the Union Republics define the jurisdiction of their higher organs of state power and state administration and the jurisdiction of the local Soviets of Working People's Deputies in respect of finance.

The Constitutions of the Union and Autonomous Republics contain special chapters dealing with their budgets and prescribing the principles on which budgets are drafted, examined, and approved.

All-Union and Republican laws regulating the state's financial operations are also sources of finance law. Special mention should be made of the laws on the state budget. Every year, the Supreme Soviet of the U.S.S.R. adopts a Law on the State Budget of the U.S.S.R. Accordingly the Supreme Soviets of the Union Republics adopt annual laws on the State Budgets of their Republics.

The Law on the State Budget of the U.S.S.R. and the laws on the State Budgets of the Union Republics determine all budgetary operations of the state for the year in question. These laws are the basis on which legal relations between the various links of the budget system arise, change, and terminate.

Other sources of finance law are decrees of the Presidium of the Supreme Soviet of the U.S.S.R. and the Presidiums of the Supreme Soviets of the Union Republics, decisions of the Council of Ministers of the U.S.S.R. and the Councils of Ministers of the Union Republics, and joint

decisions of the Council of Ministers of the U.S.S.R. and the C.P.S.U. Central Committee.

In the process of applying these acts, instructions and orders are issued by the Ministry of Finance of the U.S.S.R. and the Ministries of Finance of the Union Republics, the State Bank of the U.S.S.R., the All-Union Long-Term Investment Bank, the State Insurance Office, and the Central Administration of State Labour Savings Banks. These may also contain general rules obligatory for a definite circle of relations or a definite locality. Such instructions and orders are normative acts based on and in pursuance of law and are also sources of Soviet finance law.

In view of the specific features of the state's finance policies, the rules of finance law must be set forth in great detail and adapted to the concrete conditions of a given locality, branch of economy or culture. This is done by means of executive acts issued by the proper agencies within their jurisdiction and in accordance with the laws.

In accordance with the Constitution of the U.S.S.R. and the Constitutions of the Union Republics, local budgets are established by local Soviets of Working People's Deputies. They have the power to decrease the rate of local taxes and dues and extend privileges on their territory. Such decisions of the local Soviets and their executive organs within their jurisdiction, establishing the general rules of law for their territory, are also sources of finance law.

2. THE STATE FINANCIAL AGENCIES

The financial operations of the socialist state are performed by the organs of state power and state administration.

The higher organs of state power of the U.S.S.R. confirm the State Budget of the U.S.S.R. and also taxes and revenues which make up the Union budget and the budgets of the Union Republics; they administer the banks;

direct the money and credit system; organise state insurance; contract and grant loans.

The Council of Ministers of the U.S.S.R. takes measures to execute the State Budget of the U.S.S.R. and strengthen the money and credit system, and guides financial bodies.

The higher organs of state power and state administration of the Union Republics approve the State Budget of the Republic, determine the revenues and expenditures for the Republican and local budgets; in conformity with all-Union legislation they lay national and local taxes, dues and non-tax revenues, direct the execution of the budgets of the Autonomous Republics and the local budgets of territories and regions, and direct the insurance and savings business.

Local Soviets and their executive organs establish the local budgets, supervise their fulfilment, decide on the laying and amount of certain local taxes and dues, and generally direct financial operations of enterprises of local subordination.

Direct financial operations are performed by the bodies of the Ministry of Finance of the U.S.S.R. and the Ministries of Finance of the Union Republics.

It is the duty of the Ministry of Finance of the U.S.S.R. to supervise the observance of laws, as well as decrees of the Presidium of the Supreme Soviet of the U.S.S.R., decisions and orders of the Government of the U.S.S.R. on financial matters. The Ministry of Finance of the U.S.S.R. drafts and submits to the Council of Ministers of the U.S.S.R. the Union budget and the State Budget of the U.S.S.R., gives opinions on the draft state budgets of the Union Republics, the draft estimates and financial plans of the Ministries and Departments of the U.S.S.R. It is the duty of the Ministry of Finance of the U.S.S.R. to fulfil the Union budget and direct the work of the Ministries of Finance of the Union Republics in the execution of Republican and local budgets. The Ministry of Finance di-

rects all operations in the sphere of taxation, namely, computation and collection of state and local taxes and dues throughout the U.S.S.R., and also of deductions from the profits of state economic organisations.

The Ministry of Finance of the U.S.S.R. also exercises control functions. It controls the timely performance by state, co-operative and mass organisations of their obligations to the state budget; the correct disbursement by state enterprises and establishments of funds allocated from the budget; observance by Ministries, Departments, and enterprises of the established wage funds, staff lists, rates of wages, estimates of overhead expenses, etc.

The Central Administration of State Labour Savings Banks, which is a part of the Ministry of Finance, directs the organisation of the savings business, state credit, floating and repayment of state loans, and payment of interest and winnings on loan bonds.

The finance departments of the Executive Committees of regional (territorial), city and district Soviets are local financial organs.

In 1954 the State Bank of the U.S.S.R. was withdrawn from the Ministry of Finance, within whose system it operated since 1946. The Chairman of its Board is a member of the Government of the U.S.S.R.

3. THE PRINCIPAL INSTITUTIONS OF FINANCE LAW

The State Budget of the U.S.S.R. is a state plan, duly approved by legislation, for the formation of the basic money fund required for the functioning of the state and its expenditure in accordance with the state economic plan.

From year to year the State Budget of the U.S.S.R. has no deficit. More than that, its revenues invariably exceed expenditures, leaving a reserve at the disposal of the higher organs of state power and state administration.

The bulk of the budget revenues, more than 90 per cent, comes from socialist enterprises in the form of turnover tax, deductions from profits, income tax from co-operative organisations and collective farms. Turnover tax from socialist enterprises is the biggest item. Taxes and dues from the population are a mere seven per cent of the budget revenue. With the adoption in May 1960 of the Law on the Abolition of Taxes on the Wages of Factory, Office and Professional Workers, their value as a revenue item will become absolutely negligible.

The bulk of the budget expenditures are outlays for the national economy and for social and cultural measures, such as public education, health services, science, social security, assistance to mothers with many children. Thus, the State Budget for 1960 allocated 33,000 million rubles, or 44 per cent of all expenditures, for the national economy. It should be borne in mind that it is financed not only from the budget. Considerable investments are made directly by the enterprises from their profits. In 1960, investments by enterprises and economic organisations totalled 13,000 million rubles. Thus, the biggest item in the budget expenditure is outlays for the economy, for the strengthening of the economic foundation of the socialist state.

Allocations for social and cultural measures are another big expense item. In the 1960 budget, the figure was 25,000 million rubles, or 33.2 per cent of expenditures; in the 1947 budget it was only 11,000 million rubles; and in 1949, 12,000 million rubles.

The consistent Soviet policy of peace is also reflected in the budget of the socialist state. Appropriations for defence in the 1960 budget totalled 9,600 million rubles, or only 12.9 per cent. And it should be noted that defence spending is being steadily reduced. In 1955, for instance, the figure was 19.9 per cent.

The Soviet budget system as its structure reveals is based on the principle of democratic centralism. The Constitution of the U.S.S.R. establishes three main links,

namely, the Union, Republican and local budgets, which merge into the single State Budget of the U.S.S.R.

In the U.S.S.R., each organ of state power—rural Soviet of Working People's Deputies, district, city, regional or territorial Soviet—as well as the Autonomous and Union Republics, has its own budget, which is, however, a component part of the State Budget of the U.S.S.R. This budget system harmonises all-Union and local interests.

The expenditure and revenue of the State Budget are distributed between the links of the budget system in the following manner. In conformity with Article 14 of the Constitution of the U.S.S.R., the Union budget authorises expenditures for all undertakings of all-Union importance. This includes the financing of organisations, transport, communications, cultural establishments of all-Union importance, defence, and allocations for all-Union Ministries and Departments.

Before the implementation of the Law on the Further Improvement of Management in Industry and Construction in the U.S.S.R., the greater part of appropriations for the national economy went through the Union budget, since the key industries were of all-Union subordination. With the reorganisation of management in industry and construction and the formation of Economic Councils, the bulk of outlays for the national economy goes through the budgets of the Union Republics.

The budgets of the Union Republics authorise expenditures for the Republican Ministries and for industry, as well as educational, scientific, and medical institutions of Republican importance.

The expenditures of local budgets mainly consist of appropriations for social and cultural undertakings, housing and municipal facilities, as well as local industries.

Local budgets are made up of the budgets of Autonomous Republics, and territorial, regional, city, district, and rural budgets. Rural, district and city budgets are the main links of the local budgets, which directly finance

local industries, public utilities, social and cultural undertakings, etc. The other links of the local budget system are mainly regulatory: they distribute resources between the budgets which do the financing, and direct the work of the budget system links under their authority. Schools, hospitals, nurseries, kindergartens, libraries, and clubs on the territory of the town, village or district centre, public amenities and utilities are financed through city, district, and rural budgets.

How are revenues distributed among the various links of the budget system?

The principal state taxes, such as turnover tax, income tax from collective farms, and the greater part of the tax from the population, are all-Union. All the income tax from co-operative enterprises and organisations of Republican importance goes into Republican budgets; income tax from co-operative organisations of local importance and certain dues go into local budgets. Deductions from the profits of socialist organisations are (with certain statutory exceptions) determined in accordance with their source: deductions from the profits of enterprises, and also revenues of establishments under the authority of Union Ministries, are received into the Union budget; deductions from the profits of enterprises and revenues of establishments of Republican subordination, into the Republican budget; deductions from the profits and revenues of enterprises of the local industry, into the local budget.

Since the Union budget receives the main taxes, its revenues could be considerably in excess of its expenditures, whereas in Republican and local budgets expenditures would not be covered by the sources of revenue secured to the Republican and local budgets. To strike a balance, i.e., to allow expenditures in the Republican and local budgets to be fully covered by revenues, the Law on the State Budget of the U.S.S.R. every year allows each Republic a certain percentage of all-Union revenues to go to the revenue of the Republican budget. This means that a certain

percentage of the money that was to have gone as revenue into the Union budget on the territory of a given Republic is received as revenue into its own budget.

Similarly, the Union Republics fix a percentage of all-Union revenues and the revenues of the Republic to go as revenue into local budgets in order to balance each budget separately. As a result, there is a steady inflow of revenue earmarked to cover the expenditures of each rural, district and city budget, plus percentage deductions from the revenues of Union and Republican organisations operating on the territory of the village, district and town in question. These deductions from Union and Republican revenues are fixed for every fiscal year. Thus, the principal method of budgetary regulation in the U.S.S.R. is percentage deductions from all-Union taxes and revenues. This is a highly flexible system. It provides greater incentives to local Soviets in ensuring the timely collection of revenues from organisations of Union and Republican subordination operating on their territory. It conduces to better control on the part of local Soviets over the activities of these organisations and strengthens their ties.

The drafting, examination, approval, and execution of the budget is a highly complex process. It is regulated by the rules of Soviet budget law, which is part of finance law.

The State Budget of the U.S.S.R. is drafted on the basis of the national economic plan and data on its fulfilment, in accordance with the tasks of a given fiscal year. The draft State Budget incorporates the draft budgets of the Union Republics. The State Budget, drafted by the Ministry of Finance of the U.S.S.R., is examined by the Council of Ministers of the U.S.S.R., which takes account of the opinions of the State Planning Committee of the U.S.S.R. and the remarks of the Ministries and Departments, and puts the finishing touches to the draft. After approval by the Council of Ministers it is submitted to the Supreme Soviet of the U.S.S.R. There it is examined by the Stand-

ing Budget Commissions of the Soviet of the Union and the Soviet of Nationalities, which make known their remarks and proposals when the draft is debated at sittings of the two Chambers. The two Chambers vote separately on the total revenues and expenditures. After approval of the Budget the Supreme Soviet of the U.S.S.R., with the Chambers voting separately, enacts the Law on the State Budget of the Union of Soviet Socialist Republics.

The law establishes the totals of the State Budget of the U.S.S.R., the principal sources of revenue and the principal types of expenditure, the total revenues and expenditures for the Union budget, the totals for the budgets of the Union Republics, and the deductions from all-Union taxes and other revenues to the Republican budgets. The law is enacted by a vote on every item of the budget and on the budget as a whole.

The Supreme Soviet of the U.S.S.R. also approves the report on the execution of the State Budget for the preceding year.

On the basis of the Law on the State Budget and the approved budget itself, corrections are made in the draft budgets of the Union Republics. These are also examined by the budgetary commissions and then debated by their Supreme Soviets, which adopt the Law on the State Budget of the Union Republic. On the basis of this law, corrections are made in the territorial, regional, city, district, and rural budgets, which are examined and adopted by the appropriate Soviets of Working People's Deputies.

Credit system. Credit is very important in the Soviet economic turnover. It is extended by state banks, where socialist organisations keep their spare cash assets. Credits are either *long-term* or *short-term*, the latter being granted for a period not exceeding one year. Short-term credits are granted by the State Bank of the U.S.S.R. and the Foreign Trade Bank. Prior to 1959, long-term credits were offered by special long-term investment banks, including the Industrial Bank, Agricultural Bank, Central

Communal Bank, and local communal banks. Since their reorganisation in April 1959, long-term credits are granted by the All-Union Capital Investments Bank (Construction Bank of the U.S.S.R.) and the State Bank of the U.S.S.R.

The credit system allows the state to collect the spare cash of the socialist economic organisations and to distribute it according to plan among the industries and organisations temporarily in need of money. The 1930 Decision of the Central Executive Committee and the Council of People's Commissars of the U.S.S.R. "On the Reform of the Credit System" prohibited state and co-operative organisations from supplying goods and services or making available cash assets on credit.

Short-term credits come from the State Bank, which has its branches and offices in all towns and in almost all district centres of the Soviet Union. State and co-operative enterprises must keep their spare cash at the State Bank. In accordance with the Model Rules of the Agricultural Artel, collective farms likewise keep their spare cash at the State Bank. As a result all the spare cash of socialist organisations is concentrated at the State Bank.

This money is used to extend credits. Socialist organisations are provided with a minimum of circulating assets, and this gives rise to the need of credit: everything over and above this minimum is covered by bank credits. Thus, processing plants must purchase agricultural raw materials to supply production throughout the year, until the next harvest. But their circulating assets cover only normal stocks (to last a fortnight or a month). Bank credits cover purchases of seasonal stocks in excess of the normal planned stocks. Another example. For goods shipped, an enterprise sends its customer an invoice, which the latter must pay. But it needs money in the interval between the shipment of the goods and receipt of money from the customer (transmission of documents, remittance of money from the account in one branch of the State

Bank to the account in another branch), and so a credit is granted by the State Bank to cover these assets until payment is received from the customer.

Credits extended by the State Bank are *planned*. They are provided for by the financial plans of socialist organisations and are made available as the plan is fulfilled. To become eligible for a credit, the enterprise must fulfil its plan of production; it must not have any overstock; it must not use its cash for unplanned expenditures; it must be making a profit and have no delays in the circulation of its assets.

Credit extended by the State Bank must be used strictly for the *purpose specified*. Collateral security is given in the form of material values, such as raw materials, finished and semi-finished products, goods shipped to customer, etc.

Long-term credits are extended by the State Bank of the U.S.S.R. and the All-Union Capital Investments Bank (Construction Bank of the U.S.S.R.). Long-term credits are earmarked for capital investments. Collective farms and other co-operative organisations receive long-term credits for capital construction and capital expenditure. These credits are also planned and extended for a strictly specified purpose. The construction and capital expenditure are controlled by the banks.

Citizens are granted long-term credits for individual dwelling-house construction and for the overhaul of their dwelling-houses.

Relations between banks, socialist organisations and private persons arising from the extension of credits and settlement of accounts are regulated mainly by civil law. But it is finance law that regulates the organisation of credit, relations connected with the planning of credit and the exercise of control functions by the banks.

The monetary system of the U.S.S.R. The State Bank of the U.S.S.R. is the only bank of issue. Its cash plan, in strict accordance with which bank-notes are issued, is ap-

proved by the Council of Ministers of the U.S.S.R. The stability of Soviet currency is ensured above all by the enormous mass of commodities in the hands of the state, which it puts into circulation at stable prices.

Payments in cash occur in relations between socialist organisations and individuals, and between individuals. Settlement of accounts between socialist organisations involving cash in excess of 10 rubles are effected by clearing, when the amounts in question are written off from the account of one organisation and entered into the account of another.

As has been said, bank-notes are issued only by the State Bank of the U.S.S.R. Enterprises or establishments may not issue any scrip (bonds, cheques, etc.) in lieu of currency.

Soviet money circulates only in the territory of the U.S.S.R. It is prohibited to export Soviet currency. Only the State Bank of the U.S.S.R. may perform transactions whose objects are gold, silver, platinum and metals of the platinum group (in coin, bullion), foreign currency or bills of exchange in foreign currency (cheques, remittances, etc.). Foreign currency payments in trade operations may likewise be made only through the State Bank. Accounts in foreign currency are settled and foreign currency is purchased from foreigners by the State Bank at a fixed rate of exchange set by the State Bank and made public in its exchange rate bulletins.

State loans differ substantially from credits. When a state loan is contracted the state is the debtor, and the creditors are the holders of Government bonds. The state determines the issue, amount, terms, and redemption of the loan. Article 14 of the Constitution of the U.S.S.R. extends the jurisdiction of the higher organs of state power and state administration to the contracting and granting of state loans.

State loans have played a great part in financing socialist construction without any external assistance. The

floating of state loans was discontinued by the Decision of the Central Committee of the C.P.S.U. and the Council of Ministers of the U.S.S.R. of April 19, 1957 "On State Loans Floated by Subscription Among the Working People of the Soviet Union".

The last state loan to the sum of 1,200 million rubles, was floated in 1957. It was only a third of the 1956 loan and is to be redeemed over a period of 5 years. For the 1957 loan, annual winnings are drawn from 1958 to 1962, and repayments, from 1959 to 1962.

There now remains only the 3 per cent internal lottery loan whose bonds are freely sold and bought by savings banks for cash. Winnings for this loan are drawn in accordance with its terms of issue.

State loan relations are regulated by the rules of finance law; bonds, as securities, are objects of civil law (as in descent by inheritance, gift, etc.). However, all transactions of a speculative nature involving bonds are prohibited (as the buying up of bonds at prices below face value).

State insurance in the U.S.S.R. is designed to create reserve funds to restore losses resulting from natural calamities and accidents. State insurance conduces to the broadest preventive measures designed to safeguard socialist and personal property against destruction or damage from natural calamities and accidents. Apart from property insurance, there is insurance of individuals against the risk of death, accident, etc.

Insurance in the U.S.S.R. is managed by special organisations and agencies of the State Insurance Office, which operate within the Ministries of Finance of the Union Republics.

The property of the state is not ordinarily covered by insurance (with the exception of state housing facilities under the authority of local organs of power, and the property of establishments financed from local budgets). Thus, property insurance involves mainly co-operative property and the personal property of citizens.

Some types of insurance in the U.S.S.R. are compulsory, such as insurance of collective-farm property against fire and other natural disasters, insurance of crops against hail, torrential rains, frosts, floods, etc. Compulsory insurance also covers state housing facilities, collective-farm fishing vessels, the life of passengers on long-distance routes.

Relations arising from property and personal insurance between the State Insurance Office and insured organisations and citizens are regulated mainly by the rules of Soviet civil law. However, insurance as such and the relations between the State Insurance Office and other finance bodies are regulated by finance law.

Financing from the budget is allocation to state organisations of cash assets, which are not subject to repayment, for definite purposes. A distinction is made between the financing of organisations operating on a self-supporting basis and of budgetary organisations. The former operate on the circulating assets at their disposal. Whenever they temporarily require more circulating assets, they are given a short-term credit by the State Bank. And so they are financed from the budget for the following purposes: to increase their basic assets (for capital construction, purchase of plant, overhaul, etc.) and to increase their circulating assets.

It should be borne in mind that the basic and circulating assets of state organisations operating on a self-supporting basis are by and large increased at the expense of their own accumulations and funds. Only a part of the expenditure for these purposes is actually financed from the budget.

The training of personnel is also financed from the budget.

Capital construction and the purchase of equipment are financed through the All-Union Capital Investments Bank. This is done in strict accordance with approved plans and only as the plan is fulfilled, with the bank controlling the

fulfilment of the plan, the use of money for designated purposes, prices of materials and equipment, job rating, etc.

Circulating assets are financed by the payment of the amounts involved to the checking account of the given organisation at the State Bank.

Budgetary organisations receive all their money from the budget. This covers all their expenditures; any revenues they may have are received into the budget. Budgetary organisations are financed in accordance with approved estimates. Under the various heads of the estimates are expenditures which are covered by the amounts made available from the budget (wages, stipends, purchase of stocks, etc.). Sums earmarked as a definite item may not be used for other purposes. Appropriations may be switched from one head to another only with the permission of higher organs (with the exception of amounts earmarked as wages, stipends and capital construction, which may not be switched in any event).

4. TAX LEGISLATION

State socialist enterprises are the principal taxpayers in the U.S.S.R.: they account for over 90 per cent of all tax revenue. The taxation of enterprises is used to distribute socialist accumulations, direct resources in accordance with the state economic plan for extended reproduction, improve cultural and living standards, and strengthen the country's defence.

The system under which socialist economic organisations are taxed facilitates more efficient production and financial operations, stimulates the consolidation of the policy of economy, profitableness, and purposeful expenditure of cash assets. State taxes are paid by socialist organisations which are juridical persons. The plan of receipts from each taxpaying socialist organisation is drawn up on the basis of its production and financial plans. Thus,

non-fulfilment of the plan of production and marketing of products, over-expenditure of money, non-observance of the policy of strict economy and other shortcomings in the work of enterprises and organisations have an immediate effect on the fulfilment of their tax obligations. Financial agencies and local Soviets of Working People's Deputies take steps to remove the defects without delay.

As was said above, taxes from the population are insignificant in comparison with the taxes paid by socialist organisations: in 1960 their share of the budget revenue was only 7.4 per cent. Individuals are taxed in accordance with earned incomes. Persons with small incomes are not taxed at all (untaxable minimum). Tax privileges are allowed pensioners; the farms of disabled collective and individual farmers; persons with dependents who are unable to work; the farms of resettlers; farms hit by natural calamities, etc. The money people pay as taxes returns to them as free education, medical treatment, social insurance and social security, etc.

The fulfilment of the seven-year economic development plan for 1959-65 is paralleled by a steady growth of accumulations of socialist enterprises, and these will eventually become the only source of socialist extended reproduction and the further improvement of living standards. As a result, taxes from the population become superfluous, and so the above-mentioned Law on the Abolition of Taxes on the Wages of Factory, Office and Professional Workers was adopted in May 1960. Income tax and the tax on bachelors and childless couples will not be collected from October 1, 1965 from workers and other employees, writers and art workers, officers and soldiers, students, lawyers, handicraftsmen and artisans organised in co-operatives.

On October 1, 1960 these taxes were lifted from persons with earnings of up to 50 rubles a month, while the amount of taxes collected from persons with incomes of over 50 rubles a month was considerably reduced. On October 1,

1961 these taxes will be lifted from persons with earnings of up to 60 rubles a month, and on October 1, 1962, from persons with incomes of up to 70 rubles a month. From year to year taxes on persons with higher incomes are to be reduced with a view to eliminating these taxes altogether on October 1, 1965.

According to the Constitution of the U.S.S.R., the power to lay taxes is vested in the Supreme Soviet. The Council of Ministers of the U.S.S.R. sets the tax rates, the procedures governing tax rebates, etc. The Ministry of Finance of the U.S.S.R. issues detailed instructions on the collection of certain types of taxes in accordance with the laws, and decisions of the Council of Ministers of the U.S.S.R. Thus, taxes may be instituted throughout the U.S.S.R. only by all-Union legislation. Republican and local organs of power may not lay any new taxes by their decisions.

But this does not rule out taxation jurisdiction of the higher organs of the Union and Autonomous Republics and local Soviets. Some tax laws and relevant instructions give the higher organs of power of the Union and Autonomous Republics and local Soviets the right to settle certain matters concerning collection of instituted taxes with an eye to local conditions (assessment of the earnings of the taxpayers, rates for some taxes, additional rebates and exemptions, and intervals of payment).

In respect of local taxes, the Supreme Soviets and the Councils of Ministers of the Union and Autonomous Republics, local Soviets and their Executive Committees have the right to reduce tax rates set by the law, establish tax privileges or not to institute certain local taxes in their Republic, territory, region or district.

State and co-operative organisations (with the exception of collective farms) calculate the tax amounts themselves and at established intervals pay the amount from their checking account into the budget. The tax claims of financial agencies on state, co-operative and mass organisations take precedence of other claims, with the exception

only of the wage claims of factory and office workers, and similar payments.

Penal interest is charged in proportion to the tax arrears, which are collected from state, co-operative and mass organisations by administrative order. Tax arrears are collected from collective farms and individuals only by a court decision.

The Soviet tax system consists of relatively few taxes. A distinction is made between state taxes levied on enterprises and economic organisations, and taxes levied on citizens.

The first group includes turnover tax; cinema and entertainment tax; income tax from enterprises and organisations of co-operatives and mass organisations; and income tax from collective farms.

1) *Turnover tax* is collected from state and co-operative (except collective farms) enterprises as well as mass organisations and their enterprises. It is assessed on gross receipts from finished products or semi-finished products as a percentage of the turnover. Turnover tax rates are set by the Council of Ministers of the U.S.S.R. and differ with the type of goods, market, etc.

Turnover tax is collected once. If turnover tax is paid on goods sold by the enterprise to a marketing depot, no turnover tax is paid by the depot when the goods are sold to a retail shop. In some cases, turnover tax is not paid by the enterprise turning out the goods, but by the marketing depot.

Organisations paying turnover tax must operate on an entirely self-supporting basis; they must have an independent balance sheet and a checking account at the bank. Enterprises making up a trust do not pay turnover tax directly: all accounts with financial agencies involving taxes are settled by the trust.

Turnover tax is paid at statutory intervals (daily, every five days, every ten days); it is sometimes collected at the payment of each invoice.

The amount of each payment is established either from the marketing data for the preceding month or from the marketing data for the current month. When the balance sheet for the month is submitted to the financial agency, a precise calculation is made of the tax due, and the taxpayer either pays up any outstanding amount or is credited with any excess.

2) *Entertainment tax* is collected as a percentage of the gross receipts of entertainment houses, cinemas, etc. Theatres are now exempt from the payment of this tax.

Entertainment tax is collected from permanent entertainment enterprises and organisations and also from single performances or shows with paid entrance.

3) *Income tax from enterprises and organisations of co-operative systems and from enterprises of mass organisations.* The above-mentioned organisations pay income tax as a percentage of their profits.

Income tax is paid every quarter and is calculated from balance sheet profits for the quarter. A calculation is made of the income tax due for the year, and a new account is made out accordingly.

In some cases enterprises of mass organisations are exempt from the payment of income tax, which is not levied, for instance, on profits from the use of sports facilities.

4) *Income tax from collective farms* is collected from their actual incomes in cash and in kind. A considerable part of their products is exempted from the taxed income, namely, the value of natural products used up as seed, fodder, repayment of seed and fodder loans; the value of produce processed as raw materials at auxiliary enterprises; the value of produce set aside for the emergency reserves of seed and fodder, the food reserve and for other internal needs. Other exemptions are sums expended on production needs, proceeds from the sale of draught and productive animals earmarked for the purchase of new animals; proceeds for expenditures of auxiliary enter-

prises; insurance compensation received from the State Insurance Offices, etc.

Income tax is paid by collective farms in four instalments from March to December, the intervals coinciding with the periods at which collective farms market the bulk of their produce.

Resettled collective farms and farms hit by natural disasters are exempted from income tax or are allowed rebates. Permission for exemption or rebate comes from the Councils of Ministers of the Union and Autonomous Republics, Executive Committees of territorial and regional Soviets.

Considerable sums are also received into the budget from socialist economic organisations in the form of *non-tax payments*. The most important of these are *deductions from profits* of state enterprises. State enterprises operating on a self-supporting basis are designed to be paying concerns, and as a result must have accumulations. A part of these remains at the enterprises and, in accordance with their financial plan, goes for extended reproduction, new construction, modernisation of plant, overhaul, and increase of circulating assets. A certain part is paid into the fund of the enterprise and is used for construction, further improvement of living conditions, and efficiency bonuses. That part of the accumulations which, in accordance with the plan, is not to be used internally, goes into the budget.

Deductions from profits rank second after turnover tax. They are paid by state organisations and enterprises operating on a self-supporting basis.

Enterprises and organisations of Republican and local subordination pay deductions from profits into the Republican and local budgets respectively. When an enterprise or economic organisation operates within a central administration, combine or trust accounts with the budget on deductions from profits are settled by the higher organisation.

The amount of deductions from profits is set for each enterprise and organisation in accordance with their financial plan. Subsequently, the amount due to be paid into the budget is calculated precisely from the actual profits shown in the monthly, quarterly, and annual accounts of the payers, and a fresh account is made out.

Among the taxes levied on individuals are the agricultural tax and the special tax from individual peasant farms with horses. As has been said, income tax from individuals and the tax on bachelors and childless couples are being sharply reduced, and will be discontinued altogether as of October 1, 1965.

The new law on *agricultural tax* was adopted by the Fifth Session of the U.S.S.R. Supreme Soviet in 1953. It is collected at fixed rates per decare of personal holdings of collective-farm households. It is also paid by individuals who are not members of collective farms but who have allotments in areas under the administrative authority of rural Soviets.

The agricultural tax law sets fixed rates for the Union Republics. The Councils of Ministers of the Union Republics may, within the limits established by law, differentiate the tax rates for the Autonomous Republics, territories and regions, depending on their economic peculiarities. The Councils of Ministers of the Union Republics which have no regional division, and also the Councils of Ministers of the Autonomous Republics, the Executive Committees of the territorial and regional Soviets, may, on the basis of the average tax rates, fix tax rates for separate districts and when necessary also for separate villages, depending on their economic peculiarities.

Men who have attained the age of 60, and women, the age of 55, and who are either collective or individual farmers, are exempt from this tax, provided other able-bodied members of their families do not personally work on their personal house-and-garden plots. Other exemptions include rural intellectuals (doctors, teachers, agron-

omists, machine operators). Certain privileges are extended to members of the families of servicemen, invalids of the Great Patriotic War and their families, resettlers, and farms hit by natural calamities, etc.

Individual peasant farms with horses pay a special tax. It should be noted that individual peasant farms are now a rarity in the U.S.S.R.

Local taxes and dues are collected from socialist organisations and from citizens. These include taxes on houses, ground rent, dues from owners of the means of transport, owners of cattle, sales tax at collective-farm markets. These taxes and dues are small, and are used by local authorities to satisfy local needs, such as repair of housing facilities, building and repair of roads, new amenities, etc.

Chapter Nine

FAMILY LAW

1. THE TASKS OF FAMILY LAW. DEVELOPMENT OF SOVIET LEGISLATION ON MARRIAGE AND THE FAMILY

The Soviet family is a social form which meets profound personal interests and serves the interest of society as a whole. It is a natural foundation of social development, and promotes communist upbringing and mutual assistance in everyday life. It is a vital factor in the development and consolidation of socialist society, in the advance of the Soviet state to communism.

The Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of July 8, 1944 says that "strengthening the family has always been a major task of the Soviet state". All the rules of Soviet family law, made effective by the all-round assistance which the state gives to the family, are aimed at its solution. The forms of state assistance to the family extend to every aspect of family life. These are, above all, the measures taken by the state to increase the real earnings of the family and improve social services and the retail trade. A great deal has been done to make housekeeping easier and more attractive.

Homes and communal enterprises are being built on a broad scale: in the seven years (1959-65) almost 15 million flats are to be built in the towns, and about seven million houses in the countryside.

Soviet women are very active in social production and public affairs, and the state does a great deal to prevent this having a negative effect on family life and the interests of children. A detailed system of labour guarantees is held out by the law to pregnant women and mothers. There is an extensive network of varied institutions for mother and child welfare, such as women's and children's consulting centres, mother and child welfare institutions, sanatoriums and holiday homes for expectant mothers, and mothers and their children, numerous kindergartens, nurseries, etc. There is free universal education for children.

Boarding-schools are being organised all over the country, and they too are of substantial importance to the family, especially to single mothers and families with many children; at extended-day schools children attend classes, do their home work, and are provided with meals and recreation until evening.

Trade-union, Komsomol and Young Pioneer organisations are of considerable assistance to the family in the upbringing of children. They organise extramural activities through the clubs, children's circles (music, drawing, athletics), and children's technical stations, all of which makes for healthy and instructive recreation. Millions of children attend these institutions free of charge.

Under the 1940 law on the training of labour reserves for industry and transport, thousands of factory, vocational and railway schools were opened for teenagers. There, boys and girls of 14 or 15 years are trained, clothed, boarded and lodged at the expense of the state. After graduation the young people are offered jobs at factories and railways with an eye to the skills they acquire. This is of great importance to the state and is naturally of considerable importance to the family, both in terms of material welfare and assistance in bringing up the rising generation.

Enormous sums of money are allocated for free medical aid to the population. The state extends considerable assistance to the family in the form of grants to single

mothers and mothers with many children; pensions and allowances to old people and invalids, in the event of loss of the bread-winner, etc.

The steady rise of the people's material and cultural standards, the variety of forms in which the state helps the family to prosper materially and develop spiritually, all go to create conditions for the fulfilment of the basic task of Soviet family law, namely, to strengthen the family and prevent non-performance of family obligations.

From the very first the Soviet state concentrated on matters of marriage and the family. Two decrees on marriage, divorce and children were issued in December 1917; and the Code of Laws on Acts of Civil Status, Marriage, the Family and Guardianship, in the autumn of 1918. Thus, alongside the historic decrees eliminating the social estates, the landholdings of the gentry, national inequality, the old judiciary, the first socialist state issued new marriage and family laws.

The laws enacted soon after the October Revolution transferred the acts of civil status from the jurisdiction of the church to that of the state. The latter lifted the host of limitations on the rights of the person in contracting marriage, including dependence on creed, national origin, consents of parents, guardians and superiors, and did away with the subordinate status of women as mothers and wives in personal and property relations. Tsarist laws laid down extremely broad paternal powers and rested on the humiliation of the dignity of the natural child and the unmarried mother, while the consistory system of divorce made marriages practically indissoluble. They were insulting to divorcees, mainly the woman. Guardianship was based on the estates. All this was rejected by the very first Soviet decrees.

The need for some revision of the laws issued directly after the Revolution arose in 1925-26, under the New Economic Policy, when the family rights of women demanded even stronger protection. After discussion by the working

people, new codes of laws on marriage, the family and guardianship were adopted in the R.S.F.S.R. in 1926, and later in the other Union Republics.

By 1936, the country had achieved decisive successes in building socialism: the socialist system won in every branch of the national economy.

This made possible the further strengthening of the family, which under socialism is a social cell with highly useful functions. The idea that licence in sexual relations and neglect of children and the family were intolerable, was taking deep root in the minds of the people. On June 27, 1936 the Central Executive Committee and the Council of People's Commissars of the U.S.S.R. adopted a decision giving more protection to mothers and substantially amending the legal regulation of marriage and family matters with a view to increasing responsibility for the payment of alimony and putting an end to flippant divorces.

The Nazi invasion of the Soviet Union in 1941 disrupted peaceful construction and inflicted untold suffering on millions of Soviet families. But, while the war was still on and bitter fighting continued in Byelorussia and the Ukraine, the Soviet state set about solving the problems of peaceful construction, including the further strengthening of the family. It gave more material assistance to the family and protection to mother and child, and made substantial amendments in the legal regulation of matrimonial and family relations, as laid down in the Decree of the U.S.S.R. Supreme Soviet of July 8, 1944. This is still in force and deals with the registration and dissolution of marriage and the forms of aid to single mothers and their children.

Building up the family is a key idea of Soviet marriage and family legislation: it underlies the regulation of all concrete matters of family law.

At present, marriage and family matters are regulated by the decrees of the Presidium of the U.S.S.R. Supreme Soviet of July 8, 1944 and of March 15, 1945, and several other all-Union acts, as well as the codes of laws on marriage,

the family and guardianship in each of the 15 Union Republics, with amendments in line with the all-Union enactments. These matters are also elucidated by decisions of the Plenary Sessions of the U.S.S.R. Supreme Court.

2. MARRIAGE. CONTRACT OF MARRIAGE

The concept of marriage. Soviet law regulates marriage as a free, voluntary union of a man and a woman, and provides for freedom in deciding on marriage, establishment of a family and the choice of a spouse.

Under Soviet family law there are no restrictions in contracting marriage for social, religious, national or racial reasons; nor does the marriage contract in any way depend on the consents of third persons, including parents; there is no prohibition of marriage for divorcees or because of affinity; the bars to marriage because of consanguinity are strictly limited.

The guiding principle in all matters relating to the contract of marriage and relations of the spouses is that marriage is a free and voluntary union of a man and a woman, and does not in any way deprive the woman of her individuality, but guarantees both spouses absolute equality of personal and property rights, and human dignity.

All the rules of Soviet law establish monogamy as the highest social form of marriage.

The Soviet state does not regard marriage as a purely private matter. Its concern for the form marital relations take in society is revealed in the conditions it sets both for contracting and dissolving marriage and in the consequences arising from their violation.

Not all relations which arise in matrimony between man and woman are juridical, for some fall within the code of ethics and are regulated by the non-juridical rules of socialist life. Wedlock gives rise to certain relations of a legal nature, such as the rights of the spouses in respect of sur-

name, their mutual rights and obligations in respect of alimony, community of right in property earned by the spouses during the marriage, as well as the right of spouses to inherit from each other and the right to receive a pension or allowance.

Thus, marriage is a union which gives rise to definite rights and obligations. Therein lies the difference between marriage and extra-marital cohabitation, which does not create conjugal rights and obligations.

Summing up what has been said above, the concept of marriage in Soviet family law may be defined as follows:

Marriage is a free and voluntary monogamous union of a man and a woman with equal rights, constituting a family and creating the rights and obligations of spouses, which is contracted with observance of the rules established by law.

Registration of marriage. Only marriages registered by the Civil Registry Offices are recognised in the U.S.S.R.

Prior to July 8, 1944, the law in some Soviet Republics recognised not only registered marriages, but also *de facto* marital relations. Since the Decree of July 8, 1944, it is a provision for the entire territory of the Soviet Union that only a registered marriage creates the rights and obligations of spouses. Hence the special importance attached by the law now in force to the registration of marriage.

"Registration of marriage," says Article 1 of the R.S.F.S.R. Code of Laws on Marriage, the Family and Guardianship (and similar articles in the codes of other Union Republics), "is established not only in the interests of the state and society, but also for the purpose of protecting the personal and property rights and interests of spouses and children."

The state registration of marriage is not only an authentic record of relations for statistical purposes. Nor is it only a means of providing proof of connubial relations. It is also a form of marriage contract expressing recognition of a given alliance by society and the state. There is no marriage without such recognition. Registration is,

therefore, the constituent element of marriage, in consequence of which it creates the rights and obligations of spouses. The rules of the family law now in force, relating to the procedure of registration, are regarded as highly important.

Persons desirous of registering marriage make a declaration to that effect in the Civil Registry Office at the place of residence of one of the declarants and produce their identification papers. They sign a statement that there is no legal impediment to the contract of marriage, that they are mutually informed as to the state of each other's health, and also make a declaration on previous marriages and children, if any.

The registrar reads to the bride and groom articles of the law on the conditions governing the contract of marriage and the impediments to it, and warns them of criminal responsibility for false testimony. Thereupon he enters the marriage in the record, which is signed by the persons contracting marriage and countersigned by the registrar.

If, before the entry in the record is signed, a declaration of the existence of legal impediments to the marriage is received, the registration is suspended, and the declarant has to produce proper documentary proof.

Entry of a marriage in the record may also be made in the presence of witnesses, if the bride and groom so desire.

The Decree of July 8, 1944 provides for more solemnity in the registration of marriage, and this to some extent is reflected in the Decision of the Council of People's Commissars of the U.S.S.R. of January 8, 1946 "Concerning the Regulation of Registry of Acts of Civil Status". Alongside with improvement in the work of Civil Registry Offices, the said decision introduced several new elements into the marriage ceremony. Persons desiring to register a marriage file a declaration in writing beforehand at the Civil Registry Office, where the official appoints the day and hour—not excluding Sundays and other general local holi-

days—suitable to the declarants for the marriage ceremony. Registration is made in the presence of the persons contracting marriage, and if they so desire, also of relatives and friends. After the marriage is entered in the record, certificate of marriage is handed to the spouses in the presence of a representative of the Executive Committee of the local Soviet of Working People's Deputies or of a mass organisation (trade-union committee or collective farm).

Marriages between aliens and Soviet citizens, as well as between aliens, contracted on the territory of the Soviet Union, are registered under the general rules.

In accordance with the R.S.F.S.R. Code of Laws on Marriage and the Family, registration of marriages between aliens by the consular offices and embassies of the countries concerned acting within the territory of the U.S.S.R. is permitted on the basis of reciprocity and with observance of the conditions provided for in the code. Marriages of aliens contracted outside the Soviet Union under the laws of the countries concerned are recognised as valid on the territory of the U.S.S.R. There are similar provisions pertaining to the marriages of aliens in the codes of the other Union Republics.

The registration of marriage is certified by the marriage-lines issued by the Civil Registry Office, or the proper notification in the passport. If such registration cannot be established by producing the marriage certificate, notification in the passport or extract from the record of marriages, it is established by special judicial proceedings to ascertain facts on which depend the origin, alteration or termination of property or personal rights of citizens. This procedure is regulated in detail by the Decision of the Plenary Session of the Supreme Court of the U.S.S.R. of May 7, 1954.

Religious marriages. To ensure liberty of conscience the church in the U.S.S.R. is separated from the state, and citizens enjoy freedom of worship, including the celebra-

tion of marriage according to religious rites. But such marriage has no legal effect: marriage has juridical force only as a secular institution. The first Soviet Decree on Marriage of December 18, 1917 denied legal force to religious marriages. "Henceforth," said its Article 1, "the Russian Republic shall recognise civil marriages only."

There were no civil marriages in Russia before the Revolution: marriages were contracted in accordance with religious ritual and entered in church records. When the first Soviet decrees on civil marriage were issued, the question arose as to the validity of the old marriages. It was first settled by the Code of 1918, and later by the codes of the Union Republics (which are still in force) to the effect that marriages contracted before the Soviet decrees have the same legal effect as registered marriages.

Conditions governing the contract of marriage. Soviet family law prescribes several conditions for the contract of marriage whose non-observance results in its invalidation. Jointly and severally these conditions express the key idea of socialist family law, namely, that regulation of marriage and family relations should help identify the interests of the individual with the interests of society as a whole.

A major condition is free and voluntary *mutual consent* to matrimony. Soviet law denies legal force to external interference in the decision to contract marriage. Consent must be given consciously and must come from a person who is clearly aware of his acts. Hence the negative provision that no marriage may be contracted between persons of whom one at least is defective and is unable to account for his actions, the most significant defects being mental illness and feeble-mindedness. Besides, the Code of the Ukrainian Republic prohibits registration of marriage with persons temporarily incapable of comprehending their acts.

The criminal codes of some Republics (for instance, Georgia and Uzbekistan) contain special provisions concern-

ing threats and violence in contracting matrimony. A woman may not be coerced into marriage against her will, in particular, by the payment of bride-money, or coerced by her parents, guardians, or relatives; or a widow, by a local custom, into marriage with a relative of her deceased husband.

The provision that marriage must be based on free and voluntary mutual consent of the parties means that consent must be aimed at the establishment of marital relations, and must not serve to cloak other intentions. Marriage which is concluded without the intention of creating the rights and duties of spouses between the parties is invalid.

Marriageable age is the second condition for matrimony. In most Union Republics the statutory age for both men and women is 18 years (civil majority). In exceptional cases the Executive Committees of local Soviets may, upon special application, reduce the marriageable age for women, but as a rule by not more than one year (two years, both for women and men, in Byelorussia). In the Ukraine, Armenia, Moldavia and Azerbaijan, the marriageable age for women is 16 years.

Before the Revolution marriages in Russia were permitted at a very early age: in the Transcaucasus, for example, it was 15 years for the groom and 13 for the bride; among the nomads of Eastern Siberia, it was 16 and 14 respectively. In some Eastern republics force of custom resulted in cases of marriage between minors, even after the October Revolution. The Soviet Government at once made known its negative attitude to such practices. It started extensive educational work and enacted laws prescribing criminal penalties for persons guilty of the marriage of minors.

Soviet family law prohibits marriage between persons of whom one at least is still bound by another marriage, i.e., it recognises only *monogamy*. This principle was proclaimed by the December Decree of 1917 which prohibited ac-

ceptance of applications for registration of marriage from persons bound by another marriage. It was fortified by subsequent legislation in the Union Republics.

Violation of the principle of monogamy entails invalidation of a marriage. In some Union Republics (for instance, Georgia and Tajikistan) polygamy under certain circumstances is a criminal offence.

In all Union Republics concealment of impediments to marriage, especially a previous marriage, is a criminal offence.

The declarants must not be kin within the *prohibited degrees of consanguinity*. The codes of all the Union Republics prohibit marriage between relatives in the direct line of ascent or descent, and also between brothers and sisters, whether of the full blood or of the half blood. Extra-marital consanguinity is also an impediment to marriage.

The codes of some republics prohibit *marriage between adopted and adopter*, and also between *guardian and ward* until the termination of their legal relations arising from the guardianship. This is to protect the interests of minors and prevent guardians utilising the dependence of their wards to coerce them into marriage.

Concealment from the Civil Registry Office by persons contracting marriage of a prohibited degree of consanguinity is punishable by law.

Invalidity of marriage. Only the court has the right to declare a marriage null and void, and without a court decision no one may plead that a marriage is invalid. This is an indication of the importance attached to the contract of marriage in Soviet law.

Nullity suits may be filed by the spouses, persons whose interests are invaded by the marriage, and the procurator.

The codes of the Union Republics lay down that a marriage which has been declared null and void by a decision of the court is regarded as such from the day it was contracted. This means that such a marriage does not give rise to any marital rights or duties for the persons in ques-

tion, such as the right to a share of the marital community property earned during the continuance of such a marriage, as provided for by family law; in the event that either of the parties has contributed his means or labour to the acquisition of the community property, it is regarded as joint property under the Civil Code.

But invalidation of a marriage does not alter the legal status of children: a Plenary Session of the Supreme Court of the U.S.S.R. has elucidated that the rights of such children are equated to the rights of children born in a valid registered marriage.

A marriage is declared null and void, for instance, when it is contracted by persons of whom one at least has not attained the marriageable age at the moment of the ceremony. But this rule has several essential exceptions. A marriage is recognised as valid from the outset when 1) the spouses have attained marriageable age by the time such a case is examined; 2) when there is offspring; and 3) when the wife is pregnant as a result of such a marriage.

The Code of the Georgian Republic provides for a fourth exception from the general rule governing the invalidation of marriage with minors: the marriage remains in force when as a consequence one of the spouses has become ill or disabled.

3. DIVORCE

Marriage is a life-long union of man and wife. But there are exceptions to the rule. A marriage may be dissolved if, after it is contracted, it transpires that the spouses are no longer able to live together as a family, that the termination of marital relations is a "necessity" (Art. 26 of the Decree of July 8, 1944), and that their continuance "contradicts the principles of communist morality and cannot create normal conditions for family life and the upbringing of children" (Decision of the Plenary Session of the Supreme Court of the U.S.S.R. of September 16, 1949).

The extent of freedom allowed in divorce, divorce proceedings, and the grounds for divorce differed at the several stages of the Soviet state's development.

The first Soviet Decree "Concerning the Dissolution of Marriage" of 1917 withdrew divorce cases from the jurisdiction of the church and transferred them to organs of the state, namely, the courts and the Civil Registry Offices. The proceedings were considerably simplified.

This was also fixed in the 1918 Code and subsequent legislation. The codes adopted in 1926 and later made divorce proceedings even simpler: the formalities were performed only at the Civil Registry Offices.

The liberatory significance of these laws was great indeed. They gave thousands a chance to free themselves from fettering marital relations, which humiliated women and deprived them of equality, and which were marked by elements of violence, gave dictatorial authority to husband and father, etc.

But the family law of the first Soviet years was designed in the main to uproot the outworn ideas of marriage and divorce, and was no check on levity in dissolution of marital relations contracted under the new system and resting on new, socialist principles. The lawgiver could not set himself any such task because the socialist system of family relations was only in the making.

But the task was set later. The full victory of socialism in the country; elimination of the capitalist classes, unemployment, and exploitation of man by man; equal rights for women in practice; higher material and cultural standards of the working people—all reinforced the family and made feasible the struggle against irresponsible treatment of family relations and duties. This was necessarily reflected in the divorce laws, whose task, in the period of triumphant socialism, was to provide, without withdrawing freedom of divorce, maximum safeguards for marital relations against irresponsibility and arbitrariness in the use of divorce.

The first step was the Decision of the Central Executive Committee and the Council of People's Commissars of the U.S.S.R. of June 27, 1936. With the object of combating the thoughtless attitude to the family and family duties the laws on divorce were so amended as to curb cavalier divorces. It was enacted that the spouses must be summoned to the Civil Registry Office, and that notification of divorce must be made in the passports of the applicants; the fee for registration of divorce was increased, and for repeated divorces a progressive scale of fees introduced.

Yet the divorce proceedings in force prior to July 8, 1944 fell short of what society has the right to demand of every Soviet citizen in such a matter as dissolution of marriage. Divorce was too easy, and this was in growing conflict with the task of family building.

The Decree of July 8, 1944 was a far-reaching reform of divorce proceedings. While not making marriage indissoluble, it encourages divorce only in real necessity, and prevents its misuse against the general interest.

Instead of marriage being dissolved by the registration of divorce in the administrative organs (Civil Registry Offices) on the strength of an unmotivated declaration of the spouses, the law now in force prescribes dissolution of marriage only by a court judgement, on the application of one or both spouses, with an examination of the grounds for divorce and recognition by the court that dissolution of marriage is necessary. After the judgement the divorce is entered in the record at the Civil Registry Office.

The court judgement and the subsequent registration of divorce were made constitutive: in the absence of a judgement and subsequent registration, the marriage continues under all circumstances. Registered marriage gives rise to marital rights and duties, while *dissolution* of marriage by a court judgement and subsequent registration in a Civil Registry Office extinguishes the rights and duties of spouses.

Soviet law has abandoned the enumeration of grounds for and bars to divorce. Enumeration limits the possibility

of dissolving marriage when that is really imperative and hinders the most fitting and correct judgements. Life is so complex and diverse that what may be ground for divorce in one case is no such thing in another.

The law provides only a general criterion for the dissolution of marriage, namely, necessity. The Decision of the Plenary Session of the U.S.S.R. Supreme Court of September 16, 1949 elucidated this as follows: the court dissolves a marriage when, proceeding from the concrete circumstances of the case, it is satisfied that the initiation of divorce proceedings was well considered, that continuation of the marriage clashes with the principles of communist morality and creates abnormal conditions for family life and the upbringing of children.

The decision points out that temporary discord in the family and family jars are not sufficient ground for the dissolution of marriage. "Court judgements on the dissolution of marriage are of social and educational significance. They should promote a correct understanding of the role of the family and marriage in the Soviet state, and should promote respect for the family and marriage based on the lofty principles of communist morality, which are protected by Soviet law."

If a court deems it necessary to dissolve a marriage, it determines who of the children shall remain with one or the other spouse, and which of the parents shall bear the expense of maintenance of the children, and to what extent; the court settles the property disputes between the spouses, and in particular, determines the method of partition of their property, and grants to each spouse, if he so desires, his antenuptial surname. The court determines the method of partition of the property, decides any other property disputes between them, and grants to each his prenuptial surname in the proceedings when that is petitioned by the spouse concerned. But it is the duty of the court to determine who of the children remains with one or the other spouse, and which of the parents shall bear the ex-

pense of maintenance of the children, and to what extent, regardless of whether or not either of the spouses files such a petition.

Dissolution of marriage terminates the right of a spouse to be a successor to the other in law, as being a stranger to the testator.

4. LEGAL RELATIONS OF SPOUSES

Surname. A principle common to the codes of the Union Republics in the regulation of matters of surname of the spouses is that on registering a marriage citizens are granted the right of choosing their surname but so as not to prejudice the equal rights of men and women. Under Soviet law, the spouses may use a common surname, the surname of either husband or wife, or their antenuptial surnames.

There is no provision in Soviet law, as was the case in pre-revolutionary law, whereby a married woman had to take the man's surname. Soviet law prescribes that in marriage the wife does not lose her individuality, and her personality is not overshadowed by that of her husband: each spouse is free to choose a surname, and in that choice neither is dependent on the other.

Each of the spouses retains his nuptial surname, that is, the one chosen at the registration of marriage, for its entire duration; it is retained if the marriage terminates when one of the spouses dies or is declared dead.

A change of surname by either spouse under the general rules does not entail any change in the surname of the other spouse.

The Decree of July 8, 1944 established that if the court finds it necessary to dissolve a marriage, it must, in particular, "grant to each of the divorcees, if they so desire, their antenuptial surname".

The question of surname of divorcees, or of the divorcee who changed his when contracting marriage, is an important one, and is often connected with vital personal inter-

ests and involves the most diverse ethical, psychological, and material considerations. It involves the desire to break with the past by divorce, unwillingness to bear the surname of a former spouse when his reputation is tainted, and other considerations for which a spouse in divorce proceedings may want to restore the prenuptial surname. Thus, a wife who for several years has lived in wedlock under the surname of her husband may wish to retain it because she is known in letters, the arts, or the professions under that surname. And the longer the marriage, the more weighty are such considerations. When after divorce the children remain with the mother, she may wish to retain her nuptial surname to avoid a discrepancy in her surname and that of her children, etc. The spouse who bears the surname in question may object to the nuptial surname being retained by the spouse who had adopted it in marriage.

No consent on the part of the other spouse is required for the retention of a nuptial surname after divorce, says the Decree of July 8, 1944. This again shows that the Soviet state safeguards the rights and personal dignity of women (in respect of whom this question arises in the vast majority of cases). The law gives the spouse (most frequently, the woman) the right to decide the essential matter of surname, regardless of what the other spouse thinks. This accords with the personal dignity of Soviet women, whose growing role in social production makes it even more imperative for them to have equal right with men in matters of surname.

Domicile of the spouses. Other personal rights of the spouses. Common residence is a natural condition for orderly family life. Alongside this self-evident provision, the family codes of the Union Republics prescribe that the spouses are legally independent in the choice of domicile and that a change of residence by either spouse does not create an obligation for the other spouse to follow. This is a negation of the element of compulsion contained in

the principle of the old family law that it was the duty of the wife to follow. The marital relation is no longer based on statutory obligation but on a free and voluntary union.

There are provisions in Soviet law for various assistance to spouses in the event of change of domicile by one of them (payment of travelling expenses for members of the family in appointments or transfers to other parts of the country, living space for the family at the new place of work).

The spouses enjoy equal rights in all other personal legal relations. Soviet law makes no restriction of a married woman's legal ability, no subordination of her will to that of the husband. With respect to all legal relations, Soviet law regards the spouses as equal subjects of rights. Both spouses enjoy full liberty in the choice of occupation and profession, and manage their common household by mutual consent.

Prenuptial property and property earned in marriage. An important aspect of the legal property relations of the spouses is their rights to prenuptial property and property acquired during the continuance of their marriage.

This question has had two solutions: first, that all the property of the spouses was separate; and second, that while prenuptial property was separate, that earned in marriage was marital community property.

Initially, Soviet family law adhered to the first principle: it recognised both prenuptial property and that earned after the contract of marriage as the personal property of each of the spouses. "Marriage," declared the 1918 Code, "does not create marital community property." This implied the complete separation of the property of the spouses. In the conditions of 1918, when the Code was adopted, this rule, together with the other rules of the new family law, had a striking liberatory nature, for it stressed that women were independent and in no way subordinate to the husband in matters of property as well.

But the 1918 Code, while agreeing with the condition of the wife, who, like her husband, was a wage-earner and could acquire property from her personal earnings, was unfair to the housewife to whom it denied any right in the property earned.

At the early stages of Soviet judicial practice ground was gained by the idea that if the role of the housewife was to be enhanced and if she was to have equal rights in the family, there was need to recognise the social value of her work in the home. Recognition of the right of both spouses to the property earned in marriage, regardless of who was the legal owner of the property or in whose name it was earned, began to penetrate first into judicial practices and later into legislation.

Community of marital property signifies that it is possessed, used, and disposed of with the mutual consent of the spouses. There are no provisions in Soviet law, as in some bourgeois codes, whereby the husband alone manages or makes disposition of the common property of the spouses.

Each of the spouses, in exercising possession, use, and disposal of community property, is regarded as acting on behalf of both spouses. Only in the purchase and sale of buildings is the consent of the marital partner required. When debts are recovered from the community property of the spouses, the following distinction is drawn: when a debt is made in the interest of a family with marital community property, recovery is made from the community property of the spouses; for personal debts, each spouse is, as a rule, liable with his separate property and his share in the community property.

Partition of marital property. Marital community ownership terminates with the termination of marriage, and the marital property is partitioned.

The question arises not only of the share of each spouse in the community property, but also of the disposition of the individual things constituting it. It is important to de-

cide who of the spouses retains the children after divorce, whether or not a given thing is needed for personal use or for the exercise of a profession or trade by only one of the spouses (clothes and other things). The court decides who of the spouses is to receive this or that particular article from the marital community. The court awards a cash compensation to the other spouse for the property lost, and is guided by the actual value of the property at the moment of distribution between the litigants.

Property received by each spouse in the form of reward, etc., is not included in their marital community and remains the personal property of each. This applies also to savings bank deposits made by either of the spouses.

Contractual property relations between the spouses. The spouses may enter with each other into any contractual relations permitted by law involving property. Like the whole of Soviet family law, this provision stems from the principle that the spouses are completely independent and equal not only in respect to person, but also property. In the Soviet Union, formal property contracts between the spouses (such as the marriage contracts popular in capitalist countries) are rare.

Mutual support. Marriage creates for the spouses the obligation to give each other material assistance. If a spouse is unable to work and is needy, he or she is entitled to receive alimony from the other spouse, if the latter is able to support the former. In the event of a dispute the amount is determined depending on the financial position of the parties, and is expressed in a fixed sum; such alimony is never awarded in the form of a percentage of the earnings, as it is for underage children.

The obligation to maintain a spouse who is unable to work or is destitute continues also for a certain period after marriage, with the period determined variously in the codes of the Union Republics.

The obligation of either spouse to give material assistance to the other creates for the husband the duty of giv-

ing material assistance to his wife in pregnancy and delivery. In the event the father, who is married to the mother of their child, does not give her material assistance during pregnancy and delivery, the court, on the complaint filed by the mother, may recover from the father sums for her maintenance during the said period.

5. LEGAL RELATIONS OF PARENTS AND CHILDREN

Surname, name, and patronymic of children. At birth children acquire a surname, which is determined by the surname of their parents. Soviet law does not require children born in wedlock to take the surname of their father. They may take either that of the father or the mother. It has been said that in registering marriage the spouses may take a common surname after either the husband or the wife, or retain their prenuptial names. And so it is natural for the question to arise, whose surname goes to the children. The codes of all Union Republics give a uniform solution to this problem: if parents have a common surname it also passes to the children; if parents do not have a common surname, the child is given, by agreement between the parents, the surname of either the father or the mother.

The Code of the Byelorussian Republic allows the child a double surname combining those of the parents. This flows from the rule that in contracting marriage the spouses may take a combined, double surname.

If the parents disagree on the surname to be given their children, the dispute is settled by the organ of guardianship and curatorship, which, as in other cases of disagreement between the parents concerning their children, solves it with an eye to the interests of both parents and the children. Here again the father has no legal preponderance.

Consequently, men and women, as fathers and mothers, enjoy equal rights both when the children take the com-

mon surname of their parents (this in itself indicating voluntary agreement of the two parents at the contracting of marriage) and also when there arises the question of giving a surname to the children of parents with different surnames.

Surname is given for life. It may be changed in accordance with special rules established by law when the citizen reaches the age of 18.

When parents change their surname, the matter is settled as follows: a change of the parents' surname does not entail a change in the name of the children who are of age; when both parents change their surname, that of their minor children is also changed—they take the new name of their parents; when only one parent changes his surname, that of their underage children is decided by agreement between the parents, and in the event of disagreement, by the organ of guardianship and curatorship.

In the event a marriage is dissolved the children retain the surname given them at birth.

When a child born of a mother who has not entered a registered marriage is registered at birth, he is given the surname of his mother. In Soviet society the personal dignity of a child bearing the surname of its mother is respected like that of a child bearing the surname of its father.

In the event the mother enters a registered marriage with a person by whom she has given birth to the child, and this person acknowledges that he is the father of the child, the surname of the mother given to the child at birth may be altered to that of the father, provided both parents are in agreement.

In registering the birth of their child, parents give it the name they have chosen. Like the surname, it is fixed for life. Change of name may be made upon the attainment of the age of 18, in accordance with the rules governing change of surname.

The patronymic of children is determined by the name of their father. In the event a child is born of a mother who has not entered a registered marriage, it is given a patronymic selected by its mother.

Citizenship of children. If the citizenship of the parents is not the same, but at least one of them at the time of the child's birth was a citizen of the R.S.F.S.R., and at least one of the parents at the time of the child's birth was living on U.S.S.R. territory, the child is deemed a citizen of the R.S.F.S.R. If one of the parents was a citizen of the R.S.F.S.R. at the time of the child's birth, but at that time both parents lived outside the territory of the U.S.S.R., the citizenship of the child is determined by agreement of the parents.

A change in the citizenship of either husband or wife, where both are citizens of the R.S.F.S.R. and are living on U.S.S.R. territory, does not affect the citizenship of their children. The citizenship of children in cases where one of the parents, both of whom are citizens of the R.S.F.S.R. but live outside the territory of the U.S.S.R., loses his R.S.F.S.R. citizenship is determined by agreement of the parents.

There are similar provisions in the codes of the other Union Republics.

A change of citizenship by the parents, in consequence of which both become citizens of the U.S.S.R. or both lose U.S.S.R. citizenship, entails a change in the citizenship of their children below the age of 14. The citizenship of young persons between the age of 14 and 18 may be changed only with their consent.

Agreement between the parents that their children shall adhere to any particular religion has no legal effect.

The right and duty of upbringing. Parents have both rights and duties. This bilateral character of the parental function stands out in almost any parental right or duty.

The highly responsible duty of parents to bring up their children is at the same time one of the highly-prized rights

of citizens in the Soviet state, and is given all-round protection.

What is the concrete content of the rights and duties of parents in bringing up their children?

Upon parents rests the duty of *caring* for their children.

In some cases, neglect of children by parents creates responsibility. Parents, upon whom rests the duty of caring for children, are materially responsible for the damage inflicted by minor children under the age of 14. Parents are equally responsible for damage inflicted by young persons who have attained the age of 14.

Neglect of children by their parents is reported by agencies of the Ministry of Education and the militia to mass organisations at the place of work of the parents.

When minor children commit socially dangerous acts, it must be established whether or not this was a result of neglect on the part of the parents in the upbringing of their children. It is a criminal offence for parents to incite minor children to crime or involve them in crime.

One of the major duties of parents is care for their children's health. The law does not specify the acts constituting such parental care. This is determined in each case by the circumstances. In all matters pertaining to the attitude of parents to their children the law proceeds from the general criterion of lawfulness of such behaviour. There is the general provision that certain measures of compulsion (such as deprivation of parental rights) are taken when parents fail to do their duty or abuse their rights with respect to their children (abandoning a child in a state endangering its life; cruel treatment, etc.).

When children attain school age it is the duty of the parents to see that they attend school. Parents represent their children, and naturally want them to acquire knowledge. In the Soviet state parents are duty bound to send their children to school; that is also one of their most important rights. The right of citizens to education laid down by the Constitution of the U.S.S.R. is realised through an

extensive network of schools, free education, and the obligation of parents to send their children to school, as well as the parents' right to demand of the relevant organs that their children are enrolled at school.

The state provides the facilities and pays for the schooling of children. But it is the duty of parents to see that their children attend school, to check on their progress and to help teachers. Parents are liable to administrative action for refusal to send their children to school. Their liability is determined by obligatory decisions of local Executive Committees, which take account of national and cultural development and local customs.

The right of parents to educate their children may be defined as either the right to educate their children themselves or to entrust their children to other persons or institutions to be reared and educated.

The following rights flow from the powers of parents as persons enjoying the right of personally rearing their children: first, their right to demand the *return* of the child from any person detaining the child without warrant of law and not in pursuance of a court decree; and, second, the right of access to their child when for some reason it is not with the parents.

The right of parents to have their children live with them makes for intimate family ties and is protected by the law not only in the interests of the child's proper rearing, but also of safeguarding the love of parents for their children.

Parents may sue in court for the return of their children. The court may refuse to return a child to its parents only when it is satisfied that this is contrary to the child's interest.

In parental disputes involving children Soviet law does not hold out any presumptive rights to either father or mother. But in disputes between parents and non-parents the advantage, other conditions being equal, lies with the parents.

The superior financial position of either party is not decisive in disputes between parents involving children. The financial circumstances of the plaintiff and the defendant are naturally important, but they are only one of the factors in deciding where the child is more likely to grow up as an upstanding citizen.

The U.S.S.R. Supreme Court has repeatedly pointed out that in suits for return of children a careful examination must be made in each case of all the circumstances of life, including the material conditions of the child's life with the plaintiff and the defendant, the moral fibre and behaviour of the contestants, the sympathies of the child itself, and other factors.

It has been said that the powers of a parent as a person enjoying the right of rearing his child create the right to demand the return of his child and the right of access to his child. The latter occurs when for some reason minor children do not live with their parents. When the court decides that a child is to be brought up by another person (the other parent, a relative, etc.) it guarantees the parent the right of access to his child and, if the circumstances require, this is specifically stated in the judgement. Even when persons are deprived of their parental rights by the court, they are allowed to see their children, unless such visits may prove injurious to the children. The particulars of time and place are usually settled by the guardianship and curatorship agency, depending on the concrete circumstances of each case. The general criterion is the interest of the child, for meetings with its parents must not impede the normal course of upbringing.

Another right of the parent as a person enjoying the right to rear his child is the right to entrust his child to other persons to be reared and educated.

Except for the obligation to send their children to school, parents are free to decide on the placing of their children in educational institutions where admission is voluntary and on whether their children are to receive extra-

curricular instruction, such as music lessons, language studies, etc. Parents alone decide on the institution or person to whom their children are entrusted to be reared and educated, excepting persons who, under the law, may not act as guardians and curators (persons deprived of parental rights; persons whose interests contradict those of the children, etc.).

A mother who has not entered a registered marriage has the right, if she so desires, to place her child into a children's institution to be supported and brought up at the expense of the state. The children's institution is bound to accept the child, the placement being carried out by an order of the Executive Committee of the district or city Soviet of Working People's Deputies. The mother has the right to have the child returned at any time.

Protection and representation of children's interests by their parents. The protection of the rights and interests of minor children is above all incumbent upon the parents. They are the natural guardians or curators of children, without any special assignment, on the strength of the entry in the records of the Civil Registry Office of the fact that the child was born of the parents in question.

As the legal representatives of their children, parents have rights and obligations in civil, labour, adjective law, etc.

In civil law, minors who have not attained the age of 14 are regarded as fully incapable, i.e., they lack the capacity by their acts to acquire civil rights or incur civil obligations. In that period of their life parents perform in their stead all juridical acts which the children would perform themselves if they had attained majority.

All the acts connected with the acceptance of an inheritance received by the child at that age are performed by its parents. This also applies to the acceptance of a gift for the benefit of the child, and to all other cases requiring acts by a minor to give rise to, alter or terminate any of his

rights. In other words, in such cases parents act as guardians.

But when their children reach the age of 14 years, parents as representatives of their children's interests have different rights, namely, like curators, they merely give consent to the transactions of their children.

But although the law, while recognising parents as guardians or curators without special assignment, does not formulate any distinction in the legal status of parents as guardians, and the status of guardians who are not the parents of the child, there is, nevertheless, a distinction, and that is the degree of control the guardianship and curatorship agency has over the actions of guardians and parents. The guardian (curator) is usually appointed when the child is orphaned or when its parents are incapable of exercising parental care, and is in all his acts responsible to the guardianship and curatorship agency. The law, therefore, requires that guardians and curators annually present written reports to the guardianship and curatorship agency, with an account of their administration of the property, and the care taken of the child's person, health, upbringing, instruction, and training for social activity. The agency verifies the reports in substance and approves them; the guardian (curator) may be required to give explanations, provide vouchers, etc.

The agency exercises no such control over parents: they do not submit any reports on the exercise of their rights or performance of their duties in rearing their children, supervising their behaviour, caring for their health and education, and administering their property. The intimate relations between parents and children are in themselves adequate safeguards of the children's interests.

Parents have the right to demand annulment of labour contracts if their continuation is a health hazard to minors or is otherwise injurious to them.

In contrast to other forms of representation, parents appear in court as the legal agents of their children, both

when the children are plaintiffs and defendants, without any special authorisation, merely on the strength of their paternal and maternal powers.

Parents, as the legal agents of their minor children, have the right to perform all procedural acts which the children could have performed themselves had they been of age. They also have certain rights as representatives of their minor children in criminal proceedings. In the event a minor, as the injured person, has the right to maintain a charge, he may be represented by his father or mother. Parents also represent the interests of their children when the latter are civil plaintiffs in criminal proceedings. Parents may act as defenders of their children who are faced with a criminal charge.

Separation of the property of parents and children. Property relations of parents and children in peasant households. One of the general principles governing the regulation of family relations is separation of the property of parents and children. It is most fully applied in urban families, where in the lifetime of the parents the children have no right in their property, and vice versa. This principle is laid down in the codes of laws on marriage and the family in some Republics, and is judicial practice. In one case the Supreme Court ruled as follows: "... with the exception of the community property of the spouses, urban families do not have any joint family property. Neither the Civil Code nor the Code of Laws on Marriage establishes the concept of joint family property, excepting marital community property earned by the spouses during the continuance of their marriage."

A different principle is applied to peasant families because children, as members of a collective-farm household or an individual farm, have an equal right with their parents and other members of the household to a share of the household property. As a consequence, the community of property of parents and children does not arise from the parent-child relation, but from membership of the house-

hold, and is not regulated by family law, but by collective-farm law.

The duty of parents and children to support each other. The duty to support each other is an important element of corporeal relations of parents and children.

Parents must provide maintenance for their minor children, and also for children who have attained majority but are impecunious and are unable to work. Both duties are regulated by general provisions.

The duty to support their children, both minors and adults unable to work, falls on both parents. Soviet law rejects the idea that the mother has a smaller share of responsibility to her children. In the Soviet state women are ensured broad participation in social labour, millions of women work for a living and receive equal pay for equal work with men. And so the law establishes equality of material obligations for father and mother.

Actions for maintenance and support of minor children and children who have attained majority but are unable to work are allowed the same procedural privileges. Thus, actions for maintenance and support in both cases, as an exception to the general rules of civil procedure, do not have to be heard in the jurisdiction of the place of residence of the defendant, but may be filed also in the jurisdiction where the plaintiff has his residence. Claims for alimony in both these cases fall into the group of claims which are given priority in the execution of court judgments. Whereas not more than 20 per cent of a defendant's pay may be attached in other claims, one half of the defendant's pay may be attached in claims for the maintenance and support of minor children and children who have attained majority.

The duty of parents to maintain and support their children originates with the birth of the latter and continues until majority.

The extent to which parents are liable to maintain and support their minor children is strictly regulated: when

parents do not fulfil their duty voluntarily, one quarter of the defendant's pay may be attached if maintenance is awarded by the court for one child; one third for two children, and one half for three or more children.

The duty of parents to maintain and support their children who have attained majority arises when children are destitute or when they are unable to work. The duty terminates with the disappearance of the two factors.

Alimony for the maintenance of needy adult children or adults who are unable to work is not awarded in the form of a percentage of the defendant's wages, but in the form of a fixed sum depending on the financial position of the parties.

The duty of children to maintain and support their parents arises when parents are destitute or are unable to work. Alimony to parents is attached in the form of a fixed sum of money, depending on the means of the parties. In case of any change in the financial position of the parents or the children, and also restoration of a parent's ability to work, the court decree on alimony may be modified.

The duty of children to maintain and support their parents is connected with the person of the payee as well as with the person of the payer of alimony.

Suits filed for the maintenance and support of parents are allowed the same procedural privileges as in action for alimony to children.

Deprivation of parental rights. Parental rights are exercised exclusively in the interests of children, and the court may deprive parents of their rights, when they are exercised unlawfully.

The Republican codes of laws on marriage and the family prescribe deprivation of parental rights in respect of minor children by an order of a civil court. This differs from deprivation of parental rights by a criminal court as a penalty which is the result of a criminal offence. In the former case, however, although deprivation of parental rights is

also due to prejudicial behaviour, it is decreed regardless of whether or not the prejudicial behaviour of the parents contains the elements of a punishable criminal offence.

Deprivation of parental rights does not signify the extinction of a parent's rights with respect to all his children. When the court decrees deprivation of parental rights in view of the unlawful behaviour of parents with respect to any one child, this does not extinguish their rights in respect of all their other children, much less so in respect of children they may have in the future. Parents may be deprived of their rights only in respect of children concerning whom the court has established unlawful behaviour on the part of the parents.

When the court issues an order depriving parents of their parental rights, the guardianship and curatorship agency must give parents access to their children, except in cases where such visits may prove injurious to the children.

Deprivation of parental rights does not relieve parents of the duty to support their children.

Children of unmarried mothers. Children born of unmarried mothers, after the Decree of the Presidium of the U.S.S.R. Supreme Soviet of July 8, 1944, are entered in the record book of births under the name of the mother only, and this creates rights and obligations for mother and child only. Such children acquire the right to alimony, inheritance, etc., only on the maternal side.

The regulation of this matter by the law in force is closely bound up with other provisions of the Decree of July 8, 1944. Simultaneously with the denial of the right to sue in court for the establishment of fatherhood, the Government made a sizable increase in its grants to unmarried mothers, and established their right either to receive a state allowance or to place the child in an institution to be maintained and reared fully at the expense of the state for as long a period as they may wish.

In the U.S.S.R., unmarried mothers are full-fledged citizens. Insult to motherhood, denigration of unmarried

mothers and their children is a punishable offence. That a child born of an unmarried mother does not acquire any rights in respect of its father does not denigrate its personal dignity, but may bring some material loss, since only one parent—the mother—cares for its maintenance and support. But the loss is made good by material assistance in the form of a state allowance to the mother, or care for the child in an institution entirely at the expense of the state.

In the event the mother enters a registered marriage with the person by whom she has given birth to the child, and this person acknowledges that he is the father, the child acquires rights and obligations on the paternal side as well.

6. LEGAL RELATIONS OF OTHER MEMBERS OF THE FAMILY

Brothers and sisters. Under certain circumstances family law in the Union Republics extends to brothers and sisters the rights and imposes the obligations of alimony. These are defined as follows.

Destitute minor brothers and sisters are entitled to obtain support from their brothers and sisters. This is a supplementary duty, for needy brothers and sisters are entitled to maintenance and support only when they are unable to obtain alimony from their parents, either because they have no parents, or because their parents are impecunious.

Destitute adults who are unable to work are not entitled to maintenance from their brothers and sisters. They can claim support only from their children, parents, grandfather or grandmother. Only in the Uzbek Republic does the law give adult brothers and sisters who are unable to work the right to claim maintenance and support from their brothers and sisters.

The sum attached for the maintenance of brothers and sisters is determined by the financial position of the de-

fendant and always takes the form of a fixed monthly sum of money. In such cases, the law does not lay down any definite amount of alimony, as is done for the maintenance and support of minor children by parents.

Grandfather, grandmother and grandchildren. The laws of the Union Republics also establish the right and duty of mutual maintenance and support between grandparents and grandchildren. Both destitute minor grandchildren and adults unable to work are entitled to obtain support from their grandfather and grandmother who possess sufficient means.

This duty arises only when the children cannot obtain such support from their parents.

Which of the grandparents—paternal or maternal—is liable to maintain and support his grandchildren is decided on the merits of the case (place of residence of the grandfather or grandmother, their financial position, etc.).

The size of the alimony awarded against the grandfather or the grandmother in favour of their grandchildren is determined by the court in the form of a fixed sum of money, depending on the financial position of the defendant. This applies to cases involving adult grandchildren who are unable to work and minor grandchildren.

The rights of the grandfather and grandmother to receive alimony are regulated as follows.

A grandfather or grandmother who is destitute and unable to work is entitled to obtain support from his or her grandchildren who possess sufficient means, and only in the event such grandparent cannot obtain support from his spouse or his children.

The alimony awarded against the grandchildren for the maintenance of a grandfather or a grandmother is likewise fixed by the court not in the form of a percentage of the defendant's wages, but as a fixed sum of money, depending on the financial position of the grandchildren.

Stepfathers (stepmothers) and stepsons (stepdaughters). Entry into marriage by a person who has children creates

between these children and the other spouse relations of affinity—of stepfather (stepmother) and stepson (stepdaughter)—the only type of affinity which, under the laws of some Union Republics, gives rise to mutual rights and obligations of maintenance and support.

Under the laws of the Russian Federation and most of the other Union Republics, the duty of maintenance and support falls on the stepfather (stepmother) in the following cases:

First, in respect of minor stepchildren, and also of those who are of age if they are unable to work and are needy; when a stepchild attains majority, or recovers his ability to work, or acquires the means of subsistence, he loses the right to obtain alimony from the stepfather; second, in respect only of those stepchildren both of whose parents are dead or do not possess sufficient means to provide for the children; if a stepchild has at least one parent with sufficient means to support him, he loses the right to obtain alimony from the stepfather; third, if the stepchild has been dependent on or reared by the stepfather before the death of the father or mother, or before the parents of the stepchild became unable to maintain their children.

Under the Code of Laws on Marriage and the Family of the Byelorussian Republic it is the duty of the stepfather to support only a minor stepson; a stepson who is of age but is unable to work is not entitled to alimony from the stepfather.

The reciprocal duty of stepchildren to support their step-parents is defined in the laws of the Union Republics as follows: first, it arises in respect of destitute stepparents who are unable to work, and second, only in the event the stepchildren had been dependent on them for not less than 10 years.

Alimony in favour of stepchildren and of stepparents is never awarded as a percentage of the defendant's wages but as a fixed sum of money depending on his financial position.

7. ADOPTION

Adoption is a juridical act which gives rise to legal relations between the adopter and the adopted child similar to those existing between parents and children, and which determines the legal relations of kinship between the adopter and the offspring of the adopted.

The fundamental idea of adoption is to give minor children, who have no parents or are for some reason unable to live with their parents, all the benefits of family life under socialism in terms of physical training and ethical education.

In the U.S.S.R. only minors may be adopted; this emphasises that the main purpose of adoption is to protect the interests of children, and, as will be further demonstrated, this determines many of its rules.

It does not mean, however, that the interests of the child are in any way opposed to the interests of its parents by adoption: the deed of adoption always harmonises the interests of both parties, and helps children and their parents by adoption to satisfy a vital human urge. Adoption is not aimed mainly at the adjustment of property relations, but it does deal with the property relations that arise.

Adoption in Soviet law is free from the bars created by private property interests. It does not prohibit adoption by parents who have children; on the contrary, there are many instances in Soviet life when persons with children become parents by adoption, for it is the presence of other children that creates an especially favourable atmosphere for the rearing of the adopted child.

Adopted children are regarded as the equals of the adopter's own children and no distinction is drawn between them in relations with the adopter. The adopted child is integrated with its adoptive family, and this accords most fully with educational tasks in respect of the child.

There are no restrictions because of nationality, race or creed. During the Great Patriotic War, when many chil-

dren were orphaned, small Ukrainians, Byelorussians, and Jews were adopted by Russian, Uzbek, Kazakh, Kirghiz, Tatar and other families. These numerous cases are a striking manifestation of the friendship of the peoples in the U.S.S.R.

These are the major conditions of adoption: first, there must be consent of the adopter; second, consent on the part of the parents of the adoptee, if any, or of persons acting as parents (guardian, curator). Where the parent by adoption is married, the consent of the other spouse is required. Adoption of children above the age of 10 requires also their consent.

Any person who has attained majority is entitled to become a parent by adoption. The codes of the Georgian and Byelorussian Republics allow adoption by persons who have attained the age of 20, the Code of the Azerbaijan Republic, by persons who are at least 18 years older than the adoptee.

The following persons may not become parents by adoption: persons deprived of parental rights; feeble-minded persons; persons whose interests are opposed to those of the adoptee, as well as persons who are on inimical terms with him.

The consent of the other spouse naturally becomes superfluous when he or she also applies for adoption of the same child.

Two persons may not be the adoptive parents of one and the same child except when they are spouses; this latter case is regarded by guardianship and curatorship agencies as the most desirable and is encouraged, because it creates the best conditions for the rearing of the adoptee. If declaration of adoption is filed by one spouse only, the relevant agency inquires why the other spouse has not filed a similar declaration and confines himself to consent only, and explains that adoption by both parents is desirable. Adoption by one spouse is not an obstacle to subsequent adoption by the other spouse.

Two or more children may also be adopted. This usually happens when adoption concerns brothers and sisters or other relatives, and is done to prevent their separation. In such cases adoption is effected by a resolution of the Executive Committee of the local Soviet for each child separately.

As a rule, it is orphans who are adopted, but sometimes adoption involves children who have parents. If the parents of the adopted child are alive, their consent is required, if they have not been deprived of parental rights. This must be stated explicitly and in writing. Adoption may take place without the consent of the parents when their whereabouts is unknown, or when they are wards in consequence of being feeble-minded or mentally deranged.

Cases of adoption of stepsons or stepdaughters by their stepfathers or stepmothers are quite common. This requires not only the consent of the parent who is married to the prospective parent by adoption, but also of the child's other parent.

No adoption takes place without an investigation by the local office of public education (and in respect of children under the age of three years, by the agencies of the local health service) of the material and living conditions of the prospective parent by adoption, and also of the relations between the adopter and the adoptee. The interests of the child are not interpreted to be exclusively his material interests in the narrow sense of the term, nor any special conditions, unusual for working families. Adoption which ensures due care for the child's health, his instruction and moral upbringing, and prepares him for a working career, is regarded as being in accord with his interests.

Deeds of adoption are submitted for approval to the Executive Committee of the local Soviet by the local office of education, whose duty it is also to inspect the conditions of life of the adopted child after adoption is effected.

Adopted children and their offspring have towards par-

ents by adoption, and these have towards adopted children and their offspring, the same personal and property rights and obligations as have the corresponding relatives by blood.

8. GUARDIANSHIP AND PATRONAGE

The Soviet Government has cared for orphaned children since the October Revolution.

Homeless and neglected children were part of the heritage of the old system. They became a major problem during the Civil War, the subsequent famine in the Volga area, and the economic hardships of the first years of the New Economic Policy. Great efforts were then made to safeguard the young generation. An extensive network of state and social institutions was created for orphans, children who were neglected or driven into the streets by poverty and other causes. It was then that the practice of placing such children with working people's families originated. During the famine in the Volga area almost 100,000 starving children were fostered by the working people.

Hundreds of thousands of children were orphaned during the Great Patriotic War, and their support called for an enormous effort. They were cared for in the expanding network of state institutions such as children's homes. Great assistance was given to foster parents.

Children who lose their parents or are deprived of parental care are now placed either in a children's institution, or with a family of working people under contracts of guardianship, patronage, or adoption, as described above.

Guardianship and curatorship. Guardianship is instituted for any child not in the care of its parents or in the proper children's institution. It is always instituted in the event of the death of both parents, but sometimes also in their lifetime, as when children are reared in another family, or when both parents are unable to rear their chil-

dren because of prolonged hospitalisation, etc. Guardianship is also instituted for children whose parents are feeble-minded or mentally deranged and are themselves wards or are confined to medical institutions.

Guardians are appointed to fulfil the duties incumbent on parents: they represent the children; exercise the rights and discharge the duties of their wards on behalf of and in the interests of the latter; maintain and support their wards, and care for their health, physical development and instruction; and administer the property of their wards.

Guardianship is instituted by a decision of the Executive Committee of the district or city Soviet of Working People's Deputies. If the ward has any property, steps are taken at the institution of guardianship to safeguard it.

Not only close relatives, but also persons who are in no way related to a child may act as his guardians. When a guardian is selected, consideration is given to his personal qualities, his ability to discharge the duties, and the relations existing between him and the child. The following may not be appointed as guardians: feeble-minded or mentally deranged persons; persons deprived of parental rights; persons convicted for crimes involving moral turpitude; persons whose interests are contrary to those of the prospective ward; and minors.

Refusal of the appointment of guardian is not permitted except for good reasons. The following may decline to accept appointment as guardian: persons who have reached the age of 60; persons who by reason of illness, physical infirmity, economic status or the nature of their occupation or office are unable to discharge such duties; mothers bringing up children under eight years of age; and persons already performing the duties of guardian or curator.

The guardian must obtain permission of the guardianship agency to entrust his ward temporarily for upbringing to a children's home or boarding-school.

In the event of special merits of the guardian, the guardianship agency confers a citation for his work.

Should the guardian abuse his guardianship for selfish purposes (occupy living space, utilise the property left after the death of the ward's parents, etc.) or leave the ward without surveillance or the necessary material support, the guardianship agency relieves the guardian of his duties and transmits the records to the procurator for the institution of criminal proceedings.

Upbringing of children by way of guardianship continues until the age of 14 years (according to the Code of the Ukrainian Republic, guardianship continues until majority). When children attain this age, they are placed under a curatorship, which continues until majority. It is the duty of a curator to rear young persons and when necessary assist minors in the exercise of their rights and the discharge of their obligations.

Patronage. This is a voluntary form of maintenance and care for orphans: the children are placed by the proper authorities with working people's families to be brought up under a contract of patronage. The parties to the contract are the foster parents and the state agency placing the child in their care.

The foster parent undertakes, for a period specified in the contract, to provide his ward with sustenance, footwear and clothes on a par with his own children, care for his upbringing, send him to school and check his progress and behaviour there, and train him in work within his powers.

In respect of children under the age of four years, it is the duty of the foster parent to give the child a medical check-up at set intervals, and to follow the instructions of medical officers who examine the child, and persons inspecting his living conditions.

The proper authorities pay the foster parent a monthly allowance, stipulated in the contract, inspect the conditions of the ward, assign a child welfare worker from the nearest children's institution to help in his upbringing and physical development.

Patronage creates for the ward many rights in respect of the patron for the entire duration of the patronage, and so the child is regarded as a member of the family. But because patronage is limited in time, the child retains rights in respect of his own family. Thus, a ward does not take the surname of the patron; he retains his own surname and patronymic, and the right to inherit the property of his parents and relatives, without acquiring (like his offspring) the right to inherit the property of his foster parent or the latter's relatives.

Patronage does not extinguish the child's right to obtain alimony from his own family. If the ward had been receiving alimony, it is retained and paid to the foster parent.

A foster parent is his ward's guardian (curator) and cares for his upbringing and maintenance in accordance with the requirements of the laws on guardianship and curatorship in force.

Patronage is voluntary, and arises only under contract. The placing of orphaned children in the care of working people's families is designed to provide orderly living conditions and upbringing. This general principle is embodied in the terms on which children are made wards. They may not be placed in the care of persons deprived of parental rights. No contract of patronage may be concluded with a person whose interests are contrary to those of the child or who is in inimical relations with it. No minor may be party to such a contract. Patronage is excluded for persons who share a flat with those who may harm the child by their illness, behaviour, or attitude.

Because the interests of the child may be neglected, institution of patronage requires the consent of the adult members of the family living with the foster parent.

It is the practice to place in a family single children, or brothers and sisters, who are not, as a rule, separated when made wards in patronage. An infant is made a ward

alone only when he has elder brothers or sisters who consent to the patronage.

Children are made wards in patronage between the ages of five months and 14 years, but in exceptional cases patronage continues until the age of 16 years.

Grounds for cancelling contract of patronage are violation of contractual obligations by the patron and changes in the patron's family, property or personal position which are unfavourable to the ward. Return of the ward's parents or close relatives who had been missing from their domicile is also ground for cancellation of contract.

Proceedings are instituted against patrons who use patronage for personal gain (conversion of property left after the death of the ward's parents, etc.), or who leave their wards without surveillance and necessary support.

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Chapter Ten

CRIMINAL LAW

1. CONCEPT

The consolidation of the Soviet social and state system, the rise in living and cultural standards, the growth of consciousness of citizens and their honest attitude to their duties have reinforced legality and socialist law and order, and considerably reduced crime. Deprived of roots in the socialist system of society crime in the U.S.S.R. is on a steady downgrade.

At present some functions of Soviet state organs combating crime (the courts, Procurator's Office, militia) are being transferred to mass organisations. Combating violations of law and order and re-education of persons who commit offences not constituting a grave social danger now largely fall within the competence of mass organisations.

This does not exclude, however, the need for state compulsion with respect to criminals. The rules of Soviet criminal law, which is an important part of Soviet socialist law, regulate the struggle against crime. They determine which socially dangerous acts are crimes and prescribe the penalties to be imposed on offenders.

The Soviet state combats crime and other anti-social acts above all by persuasion, by extensive educational work. Compulsion (punishment) is used in respect of per-

sons who commit crimes. Punishment is imposed both for the purpose of reforming offenders and exerting an educational effect on the unstable members of society.

Soviet criminal laws, like all other laws of the Soviet state, are equally obligatory for all citizens. This is an expression of socialist democracy and genuine equality of all before the law.

Soviet criminal law reflects the principles of socialist humanism inherent in the Soviet state and law and broadly provides for conditional conviction of persons, excepting those who commit especially dangerous crimes; conditional release of convicted persons before the expiry of their term; public censure and other penalties not involving deprivation of liberty; reduction in some cases of penalties below the minimum prescribed by the law; a broad range of extenuating circumstances, etc.

2. SOVIET CRIMINAL LAWS IN FORCE

Soviet criminal laws now in force consist of all-Union and Republican criminal laws.

This structure is due to the federative nature of the Union of Soviet Socialist Republics.

All-Union legislation includes:

a) Fundamentals of Criminal Legislation of the U.S.S.R. and the Union Republics approved by the Second Session of the Fifth Supreme Soviet of the U.S.S.R. in December 1958. They set forth the basic principles of crime and punishment, and criminal responsibility; and serve as a basis for the new criminal codes worked out in the Union Republics;

b) Law on Criminal Responsibility for Crimes Against the State, adopted at the same session of the Supreme Soviet. It defines the various state crimes and determines the penalties;

c) Law on Criminal Responsibility for Military Crimes,

adopted at the same session. It defines military crimes and determines the penalties;

d) all-Union criminal laws on responsibility for other crimes aimed against the interests of the U.S.S.R.

Republican criminal legislation is made up of the criminal codes of the Union Republics. The criminal codes of the Union Republics consist of two parts: General Part and Special Part.

The *General Part* defines the aim of Soviet criminal legislation, determines the scope of criminal law, gives a general definition of crime, sets forth the purposes of punishment, the grounds and conditions of criminal responsibility, lists the penalties and establishes the procedure of their application.

The *Special Part* defines the concrete types of crime and prescribes the penalties.

The criminal codes of the Soviet socialist republics classify crimes in the following principal groups: crimes against the state; crimes against socialist property; crimes against the life, health, liberty and reputation of persons; crimes against the political and labour rights of citizens; crimes against the personal property of citizens; economic crimes; crimes committed by persons in office in their official capacity; crimes against the administration of justice; crimes against the order of administration; crimes against state security, law and order, and public health; and military crimes. Crimes against the state and military crimes, and also certain other crimes, are regulated by all-Union legislation and laws governing them must be included in the Republican codes without alteration.

3. SCOPE OF CRIMINAL LAW IN SPACE AND TIME

All persons committing criminal acts on the territory of the U.S.S.R. are held responsible under the laws operating at the place of the crime. Criminal responsibility of diplo-

matic representatives of foreign states and of other aliens who, by force of operative laws and international agreements, cannot be arraigned for criminal acts by Soviet courts, is, in the event of such persons committing crimes on the territory of the U.S.S.R., decided through diplomatic channels.

Soviet citizens committing crimes abroad are held criminally responsible in accordance with the criminal laws operating in the Union Republic on whose territory they have been declared criminally responsible or have been arraigned before the court. Persons without citizenship resident within the territory of the U.S.S.R., who have committed a crime outside the territory of the U.S.S.R., are held responsible on the same basis. If the aforementioned persons have been punished abroad for the crimes committed, the court may accordingly commute its sentence or may release the guilty person from serving the sentence.

Aliens committing crimes outside the bounds of the U.S.S.R. are held criminally responsible in accordance with Soviet criminal legislation in cases where such provision is made by international agreements.

The criminality of an act and liability to punishment are defined by the law operative at the time of its commission. A law rendering an act not liable to punishment as a crime or reducing the penalty is retroactive, i.e., it is also applicable to acts committed before it becomes valid. A law instituting punishment for an act or increasing the penalty for it is not retroactive.

4. CONCEPT OF CRIME

According to Article 7 of the Fundamentals of Criminal Legislation (FCL), a crime is a socially dangerous act (or omission), prescribed in criminal law, that transgresses against the Soviet social or state system, the socialist sys-

tem of economy, socialist property, the person, and the political, labour, corporeal, and other rights of citizens, and also any other act that transgresses against socialist law and order and is defined in criminal law as dangerous to society.

Soviet criminal law does not accept the formal concept of crime. The main principle, which reveals its genuinely democratic and educational nature, is the material concept of crime as a socially dangerous act or omission aimed against the Soviet system or law and order. At every stage of its development, Soviet criminal legislation held that there can be no criminal responsibility where there is no material element of the act, namely, its socially dangerous nature. In consequence, Soviet criminal law does not regard as a crime an act or omission which, even if formally embodying the elements of an act defined as a crime by criminal law, does not constitute a danger to society on account of its triviality (FCL 7).

An act which is a danger to the Soviet system and socialist law and order is thereby a violation of the rules of Soviet law, whose observance is ensured by the criminal law. Therefore, offences which are socially dangerous acts are also illegal. For if social danger is the material and socio-political characteristic of an act, illegality is its juridical characteristic. Both these characteristics are vastly important for a correct understanding of crime.

Before the adoption of the Fundamentals of Criminal Legislation in 1958, there existed in Soviet criminal law the institution of *analogy*. The gist of it was that in exceptional cases, when a socially dangerous act or omission was not specifically defined in criminal law, the court was empowered to apply a penalty for it by analogy with articles dealing with crimes most similar in nature and significance.

It was never widely applied in Soviet court practice. Its rejection by the 1958 Fundamentals of Criminal Legisla-

tion gave legal force to the actual situation that developed in Soviet court practice over a number of years.

The concept of crime is bound up with the concept of *corpus delicti*, as the body of objective and subjective elements established by law, characterising every concrete criminal offence: the object and the objective aspect of the crime, and the subject and the subjective aspect of the crime. The general concept of *corpus delicti* is extremely important for a correct understanding and qualification of crimes and the correct application of Soviet criminal law. *Corpus delicti* in any act is ground for establishing criminal responsibility against the offender. A person may not be considered guilty of having committed a crime, unless the several elements of *corpus delicti* of a given crime have been established in his acts. In the absence of any element of *corpus delicti* in the acts of the accused, criminal proceedings may not be instituted, and if instituted, may not be continued, and must be stayed at any stage. In pronouncing its sentence the court must above all answer these questions: a) did the act ascribed to the accused actually take place? b) does it contain *corpus delicti*? c) was the act performed by the accused?

The object of a crime is that against which the crime transgresses, i.e., social relations. This means that all crimes prescribed by the Criminal Code are in the final count aimed against the social relations taking shape and developing in socialist society. However, each crime has an immediate object. Thus, murder has as its immediate object human life; theft—state, collective or personal property; rowdyism—public law and order, etc.

The establishment of the immediate object of a crime is highly important for its correct qualification and determination of the penalty in accordance with the social danger of the act and the degree of guilt of the accused.

A crime may be committed by an act, i.e., the active behaviour of a person, or by an omission, i.e., the non-performance of acts which it was his duty to perform (such

as failure to give assistance to a sick person, or failure to use authority).

Harmful consequences may result from a criminal act (omission). But for the accused to be liable for the consequences they must be caused by his act (omission).

The subject of a crime is a person who commits the crime and is responsible for it. Only persons who have attained a certain age can be subjects of a crime: persons who have reached the age of 16 years before the commission of the crime are criminally responsible (FCL 10); for some crimes (murder, deliberate infliction of bodily injury impairing health, brigandage, stealing, robbery, rowdyism with evil intent, etc.) the age is 14 years.

Actually, the age limit for some crimes (committed by persons in office in their official capacity, military crimes, etc.) is considerably higher.

If the court decides that a person under the age of 18 years who has committed a crime which does not present a great social danger can be reformed without the application of criminal punishment, it may apply coercion of an educational nature that is not criminal punishment (obligation to express regret to the victim; reprimand or strict reprimand, warning, etc.). Under the circumstances, the person in question may also be sent to a commission for the affairs of minors which considers application of coercion of an educational nature.

A person who, at the time of the commission of a socially dangerous act, is *non compos mentis*, i.e., is unable to account for his actions or to govern them in consequence of chronic mental disease, temporary mental derangement, weak-mindedness or some other morbid state, is not held criminally responsible. Obligatory medical treatment as established by the legislation of the Union Republics (placing in a general or special mental hospital) may be applied to such a person by order of the court.

A person who, at the time of the commission of a crime, is *compos mentis* but who, before sentence is passed by,

the court, is affected by mental derangement, is not liable to punishment. By an order of the court compulsory medical treatment may be applied to such a person and on recovery from his illness he may be liable to punishment (FCL 11). A person committing a crime while in a state of drunkenness is not relieved of criminal responsibility.

According to Article 3 of the Fundamentals only a person guilty of a crime, that is, one who has, either deliberately or by negligence, committed any of the socially dangerous acts defined by the criminal law, is deemed liable to criminal responsibility and punishment. The social danger of an act is the objective ground for criminal responsibility, and guilt, its subjective ground. There is no responsibility or punishment without guilt.

Soviet criminal law regards guilt as a person's frame of mind with respect to the socially dangerous act in the form of premeditation or negligence. It rejects so-called objective imputation, i.e., imputation of guilt for an act merely because it was committed by the person in question. It is the paramount duty of the organ of inquiry, the Procurator's Office and the court to establish whether a person is guilty or innocent of the charge of committing a definite crime.

Guilt is established by the organ of inquiry and the court in painstaking verification, comprehensive and objective assessment, on the basis of the law, of all the evidence in a case; the degree of guilt is determined by the social and political significance of the events, the nature of the crime committed, the place, time, and the means of commission of the crime.

As has been said, guilt takes two forms: premeditation and negligence. A crime is considered to have been premeditated when the person who committed the act was aware of the socially dangerous nature of his act or omission, foresaw its socially dangerous consequences and wished or consciously allowed such consequences. A crime is considered as committed by negligence when the person

committing it foresaw the possibility of the socially dangerous consequences of his act or omission, but thoughtlessly relied on their prevention, or failed to foresee the possibility of such consequences, although he could and should have foreseen them (FCL 8 and 9).

For the correct qualification of a crime and the correct imposition of the penalty prescribed by law, the subjective aspect of *corpus delicti* must be established in the form of premeditation or negligence. A person cannot be considered guilty of having committed a crime if his acts were not premeditated or negligent. The correct understanding by the court of the subjective aspect of the *corpus delicti* of every crime is, therefore, of great practical significance in reinforcing socialist legality and protecting the interests of Soviet citizens.

A major requirement of socialist legality and justice is the establishment of the individual guilt of any person arraigned.

5. CIRCUMSTANCES EXCLUDING CRIMINAL RESPONSIBILITY

An act resembling a crime may sometimes not be a crime in view of special circumstances. Such circumstances ruling out criminal responsibility are necessary defence and dire necessity.

Necessary defence. An act containing the elements of an act defined under criminal law is not considered a crime when performed as necessary defence, with infliction of injury on the assailant, to protect the interests of the Soviet state, the interests of society, the person or rights of the defender or of another person against a socially dangerous transgression, provided the limits of necessary defence are not exceeded (FCL 13). Necessary defence is determined by the following circumstances: a) there must be a socially dangerous attack; defence against lawful actions (for example, against an officer of the court executing a sentence on the forfeiture of property) is not permit-

ted; b) the attack must be actual and not imaginary; c) it must take place at the moment in question or be about to start; d) the defender must not exceed the limits of necessity, that is, the defence must be commensurate to the intensity of the attack. The law does not in any way restrict the circle of persons who may use the right of necessary defence. The use of this right is not related to the possibility of receiving assistance from the authorities. Obvious discrepancy between defence and the nature and degree of danger of the attack is regarded as excess of the limits of necessary defence. This does not relieve a person of responsibility for the commission of an act, but is recognised as a circumstance extenuating guilt.

Dire necessity. An act containing the elements of an act defined under criminal law is not considered a crime when performed in a state of dire necessity (FCL 14). This is a state in which a person is forced to sacrifice some interest in order to avert a danger threatening the interests of the Soviet state, the interests of society, the person or rights of the individual concerned or of other citizens. Thus, firemen will destroy buildings to prevent the fire from spreading. Dire necessity rules out responsibility for any act committed only when the danger could not be averted by other means, and if the damage caused is smaller than that averted. The danger must likewise be actual, and not imaginary.

6. STAGES OF CRIMINAL ACTIVITY

As a rule, premeditated criminal activity consists of several stages: preparation, attempt and commission.

Preparation of a crime is adaptation of means or instruments, or any other premeditated creation of conditions for the commission of a crime (for example, the acquisition of a master key to commit a robbery). Preparation of a crime is generally a punishable offence. But in determining the penalty, the court must take into consideration

the extent of the danger to society involved in the preparations, the degree to which the criminal intent has been put into effect, and the causes that prevented the full commission of the crime (FCL 15). In cases where the person plotting a crime has not gone beyond the preparations, the court usually imposes a milder penalty, or none at all.

An *attempt* is a premeditated act directly aimed at the commission of a crime, but not completed for reasons not depending on the will of the guilty person (for example, when in an attempted murder a bystander knocks the knife from the hands of the would-be assassin).

An attempt is a punishable offence. But in determining the penalty the court must also take into consideration the character and the degree of the danger to society involved in the act committed by the guilty person, the degree to which the criminal intent has been put into effect, and the causes that prevented the full commission of the crime.

A crime is considered as *committed* when the guilty person completes everything he planned and achieves the desired result.

Desisting from completion of a crime is possible in the stages of preparation and attempt when a person, having the possibility of completing the crime, of his own free will abandons his criminal intent before its completion. He is then responsible only if the act performed by him contains the *corpus delicti* of another crime.

7. COMPLICITY

Complicity is defined as premeditated joint participation of two or more persons in the commission of a crime. A crime committed jointly by several persons is a greater social danger than a similar crime committed by one person. That is why the law prescribes heavier responsibility for group crimes.

The three principal forms of complicity are: simple

complicity; compound complicity, and criminal association (organisation, band).

Simple complicity is characterised by equal, uniform premeditated acts on the part of all persons directly involved in the commission of a crime (for example, when several persons in a murder inflict blows on the victim simultaneously).

Compound complicity is characterised by a distribution of parts among the accomplices. Soviet criminal law draws a distinction between perpetrators, organisers, abettors and accessories.

A *perpetrator* is one who actually commits the crime. An *organiser* is one who organises the commission of a crime or directs its commission. An *abettor* is one who instigates another to commit a crime. Instigation may consist of advice, bribery, etc.

An *accessory* is a person who does not directly participate in the commission of a crime, but who assists by giving advice or instructions, providing instruments, etc., removing hindrances, or promises to conceal the criminal, the instruments and means of committing the crime, traces of the crime or objects criminally acquired.

Criminal association is the most dangerous type of complicity. It takes the form of an organisation or band, i.e., a stable association of criminals with intent to commit a number of crimes.

In imposing penalties on the accomplices, the court considers the social danger of the crime and the degree of participation of each.

A person may be held responsible for the *concealment* of the criminal, means and instruments for the commission of a crime, and objects criminally acquired, when no promise has been given beforehand, only in cases specially prescribed by criminal law (FCL 18).

Failure to report a crime or to give information to the authorities concerning an authentically known preparation or commission of a crime, carries with it criminal responsibility only in cases specifically prescribed in criminal law (FCL 19).

8. CONCEPT OF PUNISHMENT

Purpose of punishment. Criminal punishment is regarded as a measure of state compulsion applied to offenders by the courts on the basis of the law. It is imposed only by a sentence of the court.

In the application of punishment, the Soviet state combines persuasion and compulsion. In the guidance of Soviet society and the administration of the state compulsion plays a necessary but auxiliary role. The principal method of state administration is persuasion, education, and positive example.

A penalty is not only punishment for a crime; it also aims at reforming and re-educating the convicted persons in the spirit of an honest attitude to labour, strict observance of the law, respect for the rules of the socialist way of life; and also at preventing further crime both on the part of those already convicted and on the part of other persons (FCL 20).

Punishment under Soviet criminal law serves to warn and restrain other irresponsible persons from crime (general warning), and to prevent offenders committing further crimes, and to re-educate them (specific warning). The tasks of both are inseparable.

The state's attitude to crime and criminals is expressed in the penalties prescribed by Soviet criminal law. Punishment brings the convict certain privations, but it must also be expedient and not intended to inflict physical suffering or to humiliate.

Soviet criminal law holds that the battle against crime can be won not by severe punishment, but, primarily, by efficiency in combating crime, swift detection and painstaking investigation, correct qualification of offences, and just penalties. Soviet criminal law is guided by Lenin's injunction: "What is important is not that a crime shall be severely punished, but that *not a single* crime shall pass undiscovered."¹

¹ V. I. Lenin, *Collected Works*, Vol. 4, Moscow 1960, pp. 398-99.

The Soviet state invariably proceeds from the need to combine the punishment of offenders with explanatory and educational work among the population. It regards as highly important the role of Soviet public opinion in enhancing the socialist consciousness of the masses in combating socially dangerous acts. That is why special attention is given to preventive and educational measures with growing public participation.

Penalties. The Fundamentals prescribe these^e basic penalties: a) deprivation of liberty; b) exile; c) restricted residence; d) corrective labour without deprivation of liberty; e) disqualification from a specified office or activity; f) fine; g) public censure (FCL 21).

In addition the following supplementary penalties may be included in the sentence: confiscation of property; deprivation of military or special rank; and, for members of the Armed Forces, dispatch to a disciplinary battalion.

Until such time as it is abolished for good the death penalty is an exceptional measure applied for the gravest crimes, namely: high treason, espionage, wrecking, terrorist acts, banditry, making for the purpose of uttering, or uttering, counterfeit money or securities, as an occupation, and premeditated murder under aggravating circumstances, specified in the articles of the criminal codes of the U.S.S.R. and the Union Republics which prescribe responsibility for wilful murder, embezzlement of state or social property on a particularly large scale. In wartime or at time of battle, the death penalty may also be imposed for other particularly grave crimes in cases specially provided for by Soviet criminal law.

The penalty of death by shooting is also applied to especially dangerous recidivists or persons convicted of grave crimes, who in the places of confinement terrorise prisoners deciding to reform, or who attack officials, or for that purpose organise criminal groupings, or who take an active part in such groupings.

The death sentence may not be passed on persons under

the age of 18 years at the time the crime is committed or on women who are pregnant at the time the crime is committed, at the time the sentence is passed, or at the time of the execution (FCL 22).

Deprivation of liberty is confinement of a convict to a corrective labour colony or prison. As a rule, deprivation of liberty is applied for a period not exceeding 10 years. Only for particularly grave crimes and in cases of particularly dangerous persistent offenders, as provided for by the laws of the U.S.S.R. and the Union Republics, it is applied for a period not exceeding 15 years. A person who has not reached the age of 18 years at the time the crime is committed may not be sentenced to deprivation of liberty for more than 10 years. Juveniles serve their sentence in special colonies.

Imprisonment may be applied only to those who commit grave crimes or are particularly dangerous habitual criminals. The law provides for commutation of prison sentences to detention in a colony for persons who have served not less than half the term of a prison sentence, if their behaviour is exemplary. Persons who wilfully transgress against the routine in corrective labour colonies may be imprisoned by an order of the court for a period not exceeding three years.

Exile is removal of a convicted person from his place of residence and his obligatory settlement in a specified area.

Restricted residence is removal of a convicted person from his place of residence with prohibition to live in certain places.

Exile and restricted residence may be imposed for a period not exceeding five years, and only in cases specifically provided for by law.

These penalties are not applied to persons who are under the age of 18 at the time of the crime. Nor is exile applied to pregnant women or women with dependent children under the age of eight years.

Corrective labour without deprivation of liberty is applied for a period not exceeding one year, and the sentence is served either at the convicted person's place of work or at some other place in the vicinity of his residence. Deductions from the earnings of a person sentenced to corrective labour without deprivation of liberty are made for the benefit of the state as fixed by the sentence of the court but not in excess of 20 per cent of his earnings.

Disqualification from a specified office or activity may be ordered by a court for a term of up to five years in cases when the character of the crime is such that the court considers it impossible to allow the convicted person to occupy a certain post or engage in a specified activity.

Dispatch of members of the Armed Forces to disciplinary battalions may be applied for a term ranging from three months to two years when the court deems it expedient to send them to a disciplinary battalion for a period not exceeding two years instead of imposing deprivation of liberty for the same period. For members of the Armed Forces detention in the guard room is substituted for corrective labour without deprivation of liberty for a period not exceeding two months.

On conviction of a grave crime, a person holding a military or special rank may be deprived of it by an order of the court.

On conviction of a grave crime, committed by a person awarded orders and medals or holding military or other titles of honour granted by the Presidium of the Supreme Soviet of the U.S.S.R., or of a Republic, or the Council of Ministers of the U.S.S.R., the court, in passing sentence, may request the awarding body to deprive the convicted person of the order, medal, military or other rank or title of honour.

Confiscation of property consists in the compulsory deprivation of part or of all the property constituting the personal belongings of the convicted person and its conversion to the property of the state. Property essential to the

convicted person or his family is exempt from confiscation. Confiscation of property is applied only for crimes against the state and grave crimes for personal gain.

Fines are monetary exactions determined by the gravity of the crime, with due account of the property status of the guilty person and within the limits established by law.

Public censure is censure of the convict by the court which, where deemed necessary, is brought to the notice of the general public through the press or other media.

Individualised punishment is a most important principle of Soviet criminal law: the courts impose penalties in accordance with the nature of the social danger of the crime, the degree of guilt of the accused, his personality, and attendant circumstances.

Circumstances extenuating and aggravating responsibility are vital to the court in individualising punishment. In the event of circumstances aggravating guilt the court imposes a heavier penalty, but not exceeding the maximum penalty prescribed by law for the crime in question. In the event of extenuating circumstances it may impose a milder penalty within the limits laid down by law for the crime in question, and sometimes even below the limit, or impose another, milder penalty.

Soviet criminal law classifies the following as *extenuating circumstances*: the guilty person's prevention of harmful consequences resulting from the crime, his voluntary compensation for the losses inflicted, or his making good the damage done; the commission of a crime as a result of the coincidence of grave personal or family circumstances; the commission of a crime under the influence of threat or compulsion, or because of material or other dependence; the commission of a crime under the influence of strong mental agitation caused by unlawful acts on the part of the victim; the commission of a crime during defensive action against a socially dangerous transgression although the defensive action exceeds the limits of necessary defence; the commission of a crime by a minor; the commis-

sion of a crime by a woman who is pregnant; sincere admission of guilt or voluntary surrender to the authorities (FCL 33). When passing sentence the court may also take into consideration extenuating circumstances not provided for by law. The criminal codes of the Union Republics may provide for other extenuating circumstances.

Circumstances aggravating responsibility include: the commission of a crime by a person who has previously committed any crime (depending on its nature the court has the right not to consider a previous crime an aggravation); the commission of a crime by an organised group; the commission of a crime for personal gain or other base motives; the grave consequences of the crime; the commission of a crime in respect of a minor, an aged or other person in a state of helplessness; the incitement of minors to commit a crime or the involving of minors in the commission of a crime; the commission of a crime involving excessive cruelty or abuse of the victim; the commission of a crime taking advantage of a social calamity; the commission of a crime by generally dangerous means (FCL 34).

The above list is not exhaustive: the criminal codes of the Union Republics may provide for other aggravating circumstances.

Imposition of a milder penalty than that prescribed by the law is an important principle of Soviet criminal law. The court, considering the extraordinary circumstances of a case and the character of the guilty person, may deem it necessary to impose a milder penalty than the minimum prescribed by the law or to inflict a penalty of a milder type, and may do so provided the motives are entered in the record (FCL 37).

Punishment for several crimes and on several convictions. If a person is found guilty of two or more crimes coming under different articles of criminal law, and has not yet been sentenced for any of them, the court, in determining punishment separately for each crime, imposes an aggregate punishment by allowing the less severe to run concurrently

with the more severe, or by allowing the penalties to run, wholly or in part, consecutively within the limits of that article of the law which prescribes the severest penalty.

Any of the supplementary penalties laid down by articles of the law defining responsibility for the crimes of which the accused has been found guilty may be inflicted in addition to the basic penalty.

The same rules apply to cases where it is established, after the passing of a sentence, that the convicted person is guilty of another crime committed before sentence was passed in the first case. The sentence that has been wholly or partly served in the first case is also reckoned. If a convicted person commits a fresh crime after the passing of a sentence, but before that sentence has been served in full, the court adds the whole or part of the unserved portion of the former sentence to that passed on the second conviction.

In passing *sentences to run consecutively*, the aggregate sentence must not exceed the maximum period established for the given penalty. Sentences of deprivation of liberty to run consecutively must not exceed 10 years, and 15 years in cases of crimes for which the law prescribes deprivation of liberty for a term exceeding 10 years.

Conditional sentences and suspension of sentences. Soviet criminal law has used conditional sentences at every stage of its development, taking account of the educational value of punishment. The essence of conditional conviction under laws now in force (FCL 38) is the following: if the court, in passing a sentence of deprivation of liberty or corrective labour, and with due consideration of the circumstances of the case and the character of the guilty person, decides that it would be inexpedient for the convicted person to serve the sentence, it may order a conditional application of the sentence, the motives being entered in the record. In such cases the court suspends the sentence, provided the convicted person does not commit a similar crime or any other crime of equal gravity during a probative period of from one to five years, determined by the court.

In the event of a person under conditional sentence committing a similar or equally grave crime during the probative period, the court imposes punishment in accordance with the same rules as in the imposition of punishment on several convictions. With the exception of a fine no supplementary penalty may be inflicted in cases of conditional sentences.

Considering the circumstances of the case, the character of the guilty person, and also petitions from organisations or collectives of factory and office workers or collective farmers at his place of work, the court may make these organisations or collectives responsible for the re-education and reform of the person under conditional sentence.

In wartime, the sentence of deprivation of liberty passed on a member of the armed services, or on one liable to be called up for service or to mobilisation, may be suspended by the court until the cessation of hostilities, and the convicted person dispatched to the army in the field. In such cases the court may also defer the execution of supplementary penalties.

In the event of a person whose sentence has been suspended committing a fresh crime, the court adds the new sentence to the old one in accordance with the rules governing passage of sentence on several convictions.

Limitation of criminal responsibility and of execution of sentences by lapse of time. A person may not be arraigned on a criminal charge after the following periods have elapsed from the day of the commission of the crime:

three years from the date of the commission of a crime that by law is punishable by deprivation of liberty for not more than two years or by a penalty not involving deprivation of liberty;

five years from the date of the commission of a crime that by law is punishable by deprivation of liberty for a period not exceeding five years;

ten years from the date of the commission of a crime that by law is punishable by a penalty more severe

than deprivation of liberty for a period of five years (FCL 41).

For some crimes the criminal codes of the Union Republics prescribe shorter periods.

The running of the period of limitation is suspended in respect of fugitive criminals. In such cases the running of the period of limitation is resumed from the moment the person is detained or gives himself up. Further to this, a person cannot be held criminally responsible if a period of 15 years has elapsed from the moment of the commission of the crime and no fresh crime has been committed in the interim. The question of the applicability of limitation by lapse of time to persons who have committed a crime punishable by death is decided by the court. In the event of the court deciding in the negative, the death penalty is not applied but is commuted to deprivation of liberty.

A conviction is remitted if it has not been executed within the following periods:

three years in cases of a sentence to deprivation of liberty for a period not exceeding two years or a sentence not involving deprivation of liberty;

five years in cases of a sentence to deprivation of liberty for a period not exceeding five years;

ten years in cases of a sentence more severe than deprivation of liberty for five years.

The running of the period of limitation is interrupted if the convict evades the penalty or, before it has elapsed, commits another crime for which the court sentences him to deprivation of liberty for a period not less than one year, or to exile or restricted residence for a period not less than three years. In case of a fresh crime the period of limitation resumes from the moment of its commission, and in cases of evasion of the penalty, from the moment the convicted person gives himself up to undergo punishment, or from the moment a convicted person in hiding is detained. A sentence cannot be executed if 15 years have elapsed from

the day of its pronouncement and the period of limitation has not been interrupted by the commission of a fresh crime.

Release from criminal responsibility and punishment. A person who has committed a crime may be released from criminal responsibility, if it is found that by the time of the investigation or the examination of the case in court, by force of changed circumstances, the act committed by the guilty person has lost its socially dangerous character or that the person concerned has ceased to be a danger to society.

A person who has committed a crime may be released from punishment, if by the time the case is tried in court it is found that by his subsequent irreproachable behaviour and honest attitude to work he may no longer be considered a danger to society.

A person may be released from criminal responsibility and punishment, and his case referred to a comrades' court, when he has performed any of the following acts for the first time:

- premeditated infliction of light bodily injury or beating not resulting in impairment of health; slander, insult;

- any other act for which the law allows application of measures of public influence;

- any other minor crime if, considering the nature of the act committed and the character of the guilty person, he can be reformed without the application of punishment, with the aid of measures of public influence.

Conditional release and commutation of sentence. If a person, sentenced to deprivation of liberty, corrective labour, exile, restricted residence or dispatch to a disciplinary battalion, by his exemplary behaviour and honest attitude to work proves that he has reformed, the court may order his conditional release before the term is completed or commute it. In such cases the convicted person may also be released from supplementary penalties—exile, restricted residence, or disqualification from a specified office or activity. Conditional release may be applied after half the sentence is actually served, and for persons con-

victed of particularly grave crimes against the state and other grave crimes, after no less than two-thirds of the sentence has been served.

If a person, sentenced to deprivation of liberty or corrective labour for a crime committed when he was under the age of 18 years, by his exemplary behaviour and honest attitude to work and training proves that he has reformed, conditional release and commutation of sentence may be applied after not less than one-third of the sentence has been served. If release is effected before the attainment of the age of 18 years, it is not regarded as conditional.

If a person, who has been conditionally released before completing his sentence, commits a similar or no less grave crime during the remaining period of his sentence, the court passes sentence on him in accordance with the rules of imposing punishment on several convictions.

Conditional release and commutation of sentence are not applied to the following:

- 1) especially dangerous recidivists;
- 2) persons who had been conditionally released or who had had their sentence commuted, if, before the remaining part of the sentence has been served, they commit a new premeditated crime for which they are sentenced to deprivation of liberty;
- 3) persons convicted of especially dangerous crimes against the state, banditry, the making and uttering of counterfeit money or securities, violation of currency regulations, embezzlement of state or social property on a particularly large scale, wilful murder with aggravating circumstances, rape entailing serious consequences, or rape of a minor, brigandage, receiving or giving bribes, or acting as middleman in bribery, with aggravating circumstances.

Release of a convicted person from a penalty or the commutation of a sentence, with the exception of cases of amnesty or pardon, is effected only by the court in cases and in the order prescribed by law (FCL 46).

Expunging a conviction. Criminal records are expunged in respect of the following:

- persons who have served sentence in a disciplinary battalion or have been released from it before the expiry of the term, and also members of the armed services who have undergone detention in the guard room in lieu of corrective labour;

- persons sentenced conditionally, if they have not committed a fresh crime during the probative period;

- persons sentenced to public censure, fine, disqualification from a specified office or activity, or to corrective labour if, in the course of one year after serving the sentence, they do not commit a fresh crime;

- persons sentenced to deprivation of liberty for a period not exceeding three years or to exile or restricted residence if, in the course of three years after serving the sentence (basic and supplementary), they do not commit a fresh crime;

- persons sentenced to deprivation of liberty for a period exceeding three but not exceeding six years if, in the course of five years after serving the sentence (basic and supplementary), they do not commit a fresh crime;

- persons sentenced to deprivation of liberty for a period exceeding six but not exceeding 10 years if, in the course of eight years after serving the sentence (basic and supplementary), they do not commit a fresh crime;

- persons sentenced to deprivation of liberty for a period exceeding 10 years if, in the course of eight years after serving the sentence (basic and supplementary), they do not commit a fresh crime, and if the court establishes the fact that the convicted persons have reformed, and that there is no need to regard them as having a criminal record. If a person, sentenced to deprivation of liberty, by his exemplary behaviour and honest attitude to work after serving his sentence proves that he has reformed, the court may grant the request of mass organisations to have his conviction expunged before the lapse of the periods listed above (FCL 47).

If the penalty imposed by the sentence of the court was reduced or substituted by a milder penalty, the said periods are calculated on the strength of the sentence actually served.

Amnesty and pardon may take the form of release from criminal prosecution or punishment, a milder penalty or expunging of conviction.

Amnesty extends to a specific circle of offenders, and pardon, to individuals listed by name in the act of pardon. In contrast to amnesty, pardon is usually issued at the plea of the convicted persons themselves.

9. CRIMES AGAINST THE STATE

Crimes against the Soviet social and state system have been almost entirely eliminated. Crimes against the state are now mostly committed by spies, saboteurs and other foreign agents and traitors smuggled into the Soviet Union from abroad. Without support from any segment of Soviet society, foreign agents find themselves playing the lone wolf. In combating them, state security organs have the active assistance of the entire Soviet people.

The Law on Criminal Responsibility for Crimes Against the State classifies them in two groups: 1) especially dangerous crimes, and 2) other crimes. The first group includes high treason, espionage, terrorist acts, wrecking, sabotage, anti-Soviet agitation and propaganda, the organisation of activity for the purpose of committing especially dangerous state crimes.

Other state crimes include the violation of national and racial equality; divulging of state secrets; banditry; smuggling; mass disorders; evasion of call-up for military service; evasion of mobilisation; evasion of wartime services and the payment of taxes; illegal exit from and entry into the U.S.S.R.; infringement of international air regulations; infringement of regulations governing traffic and operation in transport; damaging of communications and means of

transport; preparation and uttering of counterfeit money or securities; infringement of currency regulations; and failure to report state crimes.

Especially Dangerous State Crimes

High treason. Article 1 of the Law on Criminal Responsibility for Crimes Against the State (LCRCS) gives the following definition of high treason: "High treason, i.e., an act deliberately performed by a citizen of the U.S.S.R. to the detriment of the state independence, territorial integrity or military strength of the U.S.S.R.: desertion to the enemy; espionage; divulging of state or military secrets to a foreign state; flight abroad or refusal to return to the U.S.S.R.; aiding a foreign state in hostile activity against the U.S.S.R.; and also plotting to seize power, is punishable by deprivation of liberty for a period of from 10 to 15 years, with confiscation of property, or by death, with confiscation of property."

Criminal responsibility is not instituted against a citizen of the U.S.S.R. enlisted by a foreign secret service to conduct hostile activity against the U.S.S.R., provided he has not performed any acts in pursuance of his criminal assignment and has voluntarily informed the organs of power of his ties with the foreign secret service.

Espionage is transmission, and stealing or collecting with the object of transmission, to a foreign state, a foreign organisation or their agents, of information which by its nature is a specially protected state or military secret. The transmission or collection, on instructions from a foreign secret service, of other information to be used to the detriment of the U.S.S.R. is also regarded as espionage (LCRCS 2).

Espionage is dealt with in a separate article from high treason, which includes espionage, because only a Soviet citizen may be prosecuted under Article 1, whereas for-

eigners and stateless persons are liable for espionage under Article 2. It entails deprivation of liberty for a period of from seven to 15 years, with confiscation of property, or death, with confiscation of property.

A *terrorist act* is assassination of any statesman or public functionary, or representative of the authorities, committed in connection with their state or public activities, with the object of undermining or weakening the Soviet authority. It is punishable by deprivation of liberty for a period of from 10 to 15 years, with confiscation of property, or death, with confiscation of property (LCRCS 3).

Grievous bodily injury inflicted on these persons with the same object is likewise regarded as a terrorist act. It entails deprivation of liberty for a period of from eight to 15 years, with confiscation of property.

A special article deals with the assassination of a representative of a foreign state, or infliction on him of grievous bodily injury with the object of provoking war or international complications. Terrorist acts of this type entail penalties similar to those provided for terrorist acts against a representative of the Soviet authority (LCRCS 4).

Wrecking is destruction or damage by explosion, fire, or other means, of enterprises, structures, ways and means of transport, and communication, or other state or social property; mass poisoning or the spread of epidemic or epizootic diseases with the object of weakening the Soviet state. The crime is punishable by deprivation of liberty for a period of from eight to 15 years, with confiscation of property, or by death, with confiscation of property (LCRCS 5).

Sabotage is an act or omission designed to undermine industry, transport, agriculture, the monetary system, trade or other branches of the national economy, and also the operation of state agencies or mass organisations, with the object of weakening the Soviet state. Sabotage involves the use for criminal purposes of state or public establishments, enterprises and organisations, or the hamper-

ing of their normal operation. It is punishable by deprivation of liberty for a period of from eight to 15 years, with confiscation of property (LCRCS 6).

Agitation and propaganda directed towards the undermining or weakening of the Soviet authority, or the commission of especially dangerous state crimes, the spread for similar purposes of slanderous fabrications denigrating the Soviet state and social system, and also the circulation, preparation or possession for these purposes of printed matter of a similar nature, entail deprivation of liberty for a period of from six months to seven years or exile for a period of from two to five years.

These same acts committed by persons previously convicted of especially dangerous state crimes, or committed in wartime, are punishable by deprivation of liberty for a period of from three to 10 years.

Propaganda of war. Reflecting the peaceful policy of the Soviet state, the Law on Criminal Responsibility for Crimes Against the State prescribes a penalty in the form of deprivation of liberty for a period of from three to eight years for the propaganda of war in any form whatsoever (LCRCS 8).

Organised activity directed towards the preparation or commission of especially dangerous state crimes, the establishment of organisations for the commission of such crimes, and also participation in anti-Soviet organisations entail penalties established by the law for crimes towards whose commission the organised activity was directed (LCRCS 9).

Especially dangerous crimes directed against another socialist state entail penalties similar to those established for crimes against the U.S.S.R.

For the crimes specified in the above-mentioned articles of the Law on Criminal Responsibility for Crimes Against the State the guilty persons may be sentenced by the court to exile for a period of from two to five years, as an additional penalty.

Other State Crimes

Article 11 of the Law on Criminal Responsibility for Crimes Against the State safeguards the national gains of the October Socialist Revolution. According to this article, *propaganda or agitation intended to arouse racial or national enmity or discord*, and any direct or indirect restriction of the rights of, or the establishment of any direct or indirect privileges for, citizens on account of racial or national origin, are punishable by deprivation of liberty for a period of from six months to three years, or exile for a period of from two to five years.

According to Article 12, *divulging information constituting a state secret* by a person to whom it is entrusted or becomes known by virtue of his office, provided there is no evidence of high treason or espionage, is punishable by deprivation of liberty for a period of from two to five years. The same act, if it results in harmful consequences, is punishable by deprivation of liberty for a period of from five to eight years. Loss of documents containing state secrets, and also information constituting a state secret, by a person to whom they are entrusted, provided the loss is the result of a breach of the established rules of handling such documents or objects, is punishable by deprivation of liberty for a period of from one to three years. The same act, if it results in grave consequences, entails deprivation of liberty for a period of from three to eight years (LCRCS 13).

Soviet criminal law safeguards the monopoly of foreign trade exercised by the Soviet state to promote the independent development of its economy. *Smuggling* is a crime against this state monopoly. It is the illegal carriage of goods or other valuables across the state frontier of the U.S.S.R., involving concealment of the objects in special repositories, or fraudulent use of customs or other papers, or on a large scale, or by a group of persons banded together for smuggling, or abuse by a person in office of his

official position; and also illegal export and import of explosives, narcotics, virulent poisonous substances, arms and military equipment. This crime is punishable by deprivation of liberty for a period of from three to ten years, with confiscation of property (LCRCS 15). Exile for a period of from two to five years may be imposed as an additional penalty.

Article 20 prescribes deprivation of liberty for a period of from one to three years for departure from or entry into the U.S.S.R., or crossing the frontier without the proper passport or permit from the competent authorities. But this does not extend to the entry into the U.S.S.R. of foreign citizens without the proper passport or permit to enjoy the right of asylum offered by the Constitution of the U.S.S.R.

Flight into and out of the U.S.S.R. without the proper permit; non-observance of routes, landing places, air gateways, and altitudes specified in the permit or other infringement of international air regulations is punishable by deprivation of liberty for a period of from one to 10 years, or a fine of up to 1,000 rubles, with or without confiscation of the aircraft (LCRCS 21).

Violation by persons employed on railways, water or air transport of regulations governing traffic and operation of the means of transport, which results in accidents involving humans, wrecks, damage or other grave consequences, and also bad repair of the means of transport, tracks, means of signalisation and communication, resulting in similar consequences, are punishable by deprivation of liberty for a period of from three to 15 years. The same acts, if they do not result in such consequences, but, to the knowledge of the guilty person, create the danger of such consequences, are punishable by deprivation of liberty for a period of from one to three years, or corrective labour for a period not exceeding one year (LCRCS 22).

Wilful destruction or damage of railways or structures thereon, rolling stock or vessels, means of communication and signalisation, which results, or could result, in a train

or ship wreck, or disruption of the normal operation of transport and communications, is punishable by deprivation of liberty for a period of from three to 15 years (LCRCS 23); these same acts performed by way of occupation entail deprivation of liberty for a period of from 10 to 15 years with confiscation of property, or death with confiscation of property.

Counterfeiting with the object of uttering, and also the uttering of counterfeit treasury notes, notes of the State Bank of the U.S.S.R., false coins, state securities or foreign currency are punishable by deprivation of liberty for a period of from three to 15 years, with confiscation of property (LCRCS 24).

Infringement of currency regulations, and also speculation in currency or securities are punishable by deprivation of liberty for a period of from three to eight years, with confiscation of the currency and securities (LCRCS 25).

For the crimes specified in Articles 24 and 25 exile for a period of from two to five years may be imposed as an additional penalty.

Failure to report state crimes being prepared or committed, which are enumerated in Articles 1-6, 9, 14, and 24 of the Law, is punishable by deprivation of liberty for a period of from one to three years, or corrective labour for a period of from six months to one year (LCRCS 26).

10. CRIMES AGAINST SOCIALIST PROPERTY

The Constitution of the U.S.S.R. establishes that socialist property is the sacred and inviolable foundation of the Soviet system, the source of the wealth and might of the country, the source of the prosperity and culture of the people. The Constitution binds every citizen of the U.S.S.R. to safeguard and fortify socialist property.

Criminal responsibility for crimes against socialist property is laid down by the criminal codes of the Union Republics.

The Criminal Code of the Russian Federation establishes responsibility for the stealing of state or social property, the penalties differing with the method of commission: larceny, robbery, misappropriation, embezzlement, abuse of official position, swindling, and also extortion.

Larceny, i.e., taking and carrying away feloniously of state or social property, entails deprivation of liberty for a period not exceeding three years, or corrective labour for a period not exceeding one year.

In larceny, aggravating circumstances are repeated commission; compact; use of technical means; and also commission by an especially dangerous habitual criminal, or on a large scale.

Robbery of state or social property without violence is punishable by deprivation of liberty for a period not exceeding four years, or corrective labour for a period not exceeding one year.

In robbery, aggravating circumstances are resort to violence not constituting a danger to life and health; compact; repeated commission; and also commission by an especially dangerous habitual criminal, or on a large scale.

Assault with the aim of taking possession of state or social property, coupled with violence constituting a danger to the life and health of the victim, or putting him in fear of such violence (brigandage), is punishable by deprivation of liberty for a period of from three to 10 years, with confiscation of property.

Aggravating circumstances in brigandage are compact of a group of persons; the use of arms or other objects as weapons; infliction of bodily injury; and also commission by an especially dangerous habitual criminal, by a person who had previously committed brigandage with the object of taking possession of state or social property or the per-

sonal property of citizens; banditry; and also acts designed to take possession of property on a large scale.

Petty larceny of state or social property by a person previously subjected to measures of public influence for petty larceny, or by a person who, while not previously subjected to such measures, had committed petty larceny more than two times, or by a person who, because of the circumstances of the case, cannot be subjected to measures of public influence, is punishable by deprivation of liberty for a period not exceeding one year or corrective labour for a similar period.

The law also prescribes responsibility for destruction or damage of state or social property, or carelessness in safeguarding it.

11. CRIMES AGAINST THE PERSON

Utmost protection of the person and his rights flows from the nature of socialist society and the Soviet state. In the Soviet Union, attention has always been centred on man, with his interests and needs. In view of this, criminal encroachments on the life, health, liberty, personal reputation, and other attempts against the person are regarded as especially intolerable. And so, apart from certain state crimes, the short list of offences punishable by death includes premeditated murder under aggravating circumstances.

Protection of the person against criminal encroachment is one of the principal tasks of Soviet criminal law. The criminal codes of the Union Republics provide for punishment of various offences against the life, health, liberty, and reputation of the person.

Let us make a brief examination of some offences of this group in the light of the Criminal Code of the R.S.F.S.R.

Murder, i.e., unlawful killing of a human being with premeditation or through negligence, is regarded as the gravest crime against the person.

Premeditated murder under aggravating circumstances is punishable by deprivation of liberty for a period of from eight to 15 years, with or without exile, or by death.

Premeditated murder under aggravating circumstances is commission of the crime from mercenary or rowdy motives; or in connection with the exercise by the victim of his official or public duties; or with especial cruelty; or in a manner endangering the lives of many persons; or with the object of concealing or facilitating commission of another crime, as well as involving rape; or of a woman known by the guilty person to be pregnant; or of two or more persons; or by a person who had previously committed a premeditated murder; or because of a blood feud, or by an especially dangerous habitual criminal.

Premeditated murder without aggravating circumstances is punishable by deprivation of liberty for a period not exceeding 10 years. If the crime is done upon a sudden passion provoked by violence or gross insult on the part of the victim, or any other unlawful acts of the victim, provided such acts have resulted or could have resulted in dire consequences for the guilty person or his relations, the penalty is deprivation of liberty not exceeding five years or corrective labour not exceeding one year.

Causing death through negligence entails deprivation of liberty for a period not exceeding three years or corrective labour for a period not exceeding one year.

Causing a person who is dependent materially or in any other way upon another person, by cruel treatment or systematic humiliation of his personal dignity, to *commit suicide* or to attempt his own life, is also punishable by deprivation of liberty.

Premeditated infliction of grievous bodily injury constituting a hazard to life or resulting in the loss of sight, hearing or any organ, or loss by any organ of its function, mental derangement or any other injury to health coupled with continued disablement to the extent of not less than one-third, or resulting in induced abortion, or in

permanent facial disfigurement, is punishable by deprivation of liberty for a period not exceeding eight years. If death results from such injury, or if it is inflicted by any means involving agony or torture, or is committed by an especially dangerous habitual criminal, the penalty is deprivation of liberty for a period of from five to 12 years.

Premeditated infliction of less grievous bodily injury not constituting a hazard to life and not resulting in the above-mentioned consequences, but causing prolonged impairment of health or considerable continued disablement to the extent of less than one-third, is punishable by deprivation of liberty for a period not exceeding three years or corrective labour for a period not exceeding one year.

Premeditated infliction of light bodily injury or beating entails deprivation of liberty for a period not exceeding one year or corrective labour for a similar period.

To prevent injury to the health of women caused by illegal abortion the law prescribes a penalty for doctors in the form of deprivation of liberty for a period not exceeding one year, or corrective labour for a similar period, or disqualification from medical practice; if the crime is committed by a person without a higher medical education, the penalty is deprivation of liberty for a period not exceeding two years, or corrective labour for a period not exceeding one year. Repeated commission of the said acts, or death of the victim, or other dire consequences entail deprivation of liberty for a period not exceeding eight years.

The criminal codes also provide for penalties for sex crimes. The most severe punishment is imposed for rape, which under aggravating circumstances entails deprivation of liberty for a period not exceeding 15 years, with or without transportation.

The law also prescribes responsibility for failure to give assistance to persons in a state of mortal danger.

Failure to give necessary and urgent assistance to a person in a state of mortal danger, when it could have clearly been given without serious danger to the guilty

person or other persons, or failure to report to the proper establishments or persons the need to give assistance, is punishable by corrective labour not exceeding six months or public censure, or entails the application of measures of public influence.

Abandoning a person known to be in a state of mortal danger or deprived of the possibility of taking measures for self-protection because of minority, old age, illness or helpless condition in general, if the guilty person was able to give assistance to the victim and was charged with his care, or had himself placed the victim in a state of mortal danger, is punishable by deprivation of liberty for a period not exceeding two years, or corrective labour for a period not exceeding one year.

Criminal responsibility is also prescribed for *insult*, *slander*, and several other crimes against the person.

12. CRIMES AGAINST POLITICAL AND LABOUR RIGHTS

The criminal codes of the Union Republics also lay down responsibility for violation of the political and labour rights of citizens incorporated in the Constitution of the U.S.S.R.

The codes establish criminal responsibility for obstruction of the exercise by Soviet citizens of their right to vote; falsification of electoral papers; deliberately incorrect counting of ballot-papers; as well as violation of the secrecy of the ballot; and obstructing performance of religious ceremonies.

13. CRIMES AGAINST PERSONAL PROPERTY

The powerful upsurge of Soviet economic development ensures a steady growth of prosperity. Responsibility for criminal encroachments on the personal property of citizens is provided for by special sections of the criminal codes of the Union Republics.

Corpus delicti of crimes against the personal property of citizens, and the list of aggravating circumstances are in

the main identical with *corpus delicti* and the list of aggravating circumstances of similar crimes against socialist property dealt with above.

According to the Criminal Code of the R.S.F.S.R., crimes against personal property (without aggravating circumstances) are punishable as follows: larceny, by deprivation of liberty for a period not exceeding two years or corrective labour for a period not exceeding one year; robbery, by deprivation of liberty for a period not exceeding three years or corrective labour for a period not exceeding one year; brigandage, by deprivation of liberty for a period of from three to 10 years.

The criminal codes of the Union Republics set responsibility for other crimes against personal property, such as swindling, extortion, destruction or damage of the personal property of citizens.

Crimes against the property of associations which are not socialist organisations (such as religious institutions) are punishable under articles of the Criminal Code prescribing crimes against the personal property of citizens.

14. ECONOMIC CRIMES

Criminal legislation prescribes responsibility for various *economic crimes*, namely, production of bad quality goods or of goods in incomplete sets, speculation, giving false measure, etc.

Repeated or large-scale production by an industrial enterprise of bad quality or substandard goods or of goods in incomplete sets makes the director, chief engineer and the head of the quality inspection department liable to deprivation of liberty for a period not exceeding three years, or corrective labour for a period not exceeding one year, or discharge from their office.

Speculation—the buying and selling of goods or other articles with the object of gain—is one of the most dangerous economic crimes covered by criminal legislation.

According to the Criminal Code of the R.S.F.S.R. it is punishable by deprivation of liberty for a period not exceeding two years, with or without confiscation of property, or by corrective labour for a period not exceeding one year, or by a fine not exceeding 30 rubles.

Speculation as a trade or on a large scale is punishable by deprivation of liberty for a period of from two to seven years, with confiscation of property.

Repeated petty speculation is punishable by corrective labour for a period not exceeding one year, or a fine not exceeding 20 rubles, with confiscation of the objects of speculation.

First offenders in petty speculation are liable to administrative responsibility.

To protect Soviet consumers and ensure strict observance of the rules of Soviet trade, the Criminal Code makes deception of customers (giving false measure, tampering with established retail prices, etc.) a punishable offence. Under the R.S.F.S.R. Criminal Code these crimes are punishable by deprivation of liberty for a period not exceeding two years, or corrective labour for a period not exceeding one year, or disqualification from work in trading enterprises or catering establishments.

The penalties are higher when such acts are performed on a large scale or by persons previously convicted of similar crimes.

15. CRIMES COMMITTED BY PERSONS IN OFFICE

The criminal codes also institute penalties for criminal encroachments on the proper working of the state apparatus by persons in office, namely, *abuse of an official position or of authority, exceeding authority or official powers* vested in a person in office, and careless discharge of one's duties, when they inflict substantial harm on state or public interests, or the legitimate rights and interests of citizens.

Acceptance by a person in office, whether personally or through a middleman, of a bribe, in any form whatsoever,

is punishable by deprivation of liberty for a period not exceeding five years. The penalty may be increased to 10 years, with or without confiscation of property, if the crime is committed by a person in a responsible position or a person previously convicted of accepting bribes or accepting bribes repeatedly or with extortion. Soviet criminal law also punishes persons guilty of giving a bribe or acting as middlemen. The criminal codes also prescribe responsibility for forgery of documents by a person in office.

16. CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

The criminal codes of the Union Republics also prescribe responsibility for crimes against the administration of justice. These crimes include the institution of criminal responsibility against a person known to be innocent; entry by judges of a sentence, decision, finding or order known by them to be unjust; arrest or detention known to be illegal; use of threats or other illegal acts in forcing to give testimony; giving information or evidence known to be false; escape from places of detention or from custody; concealment of grievous crimes or failure to report them, and certain other crimes.

17. CRIMES AGAINST THE ORDER OF ADMINISTRATION

The criminal codes of the Union Republics establish responsibility for various crimes against the order of administration.

Let us examine some crimes classed in this group by the Criminal Code of the R.S.F.S.R.

Offering resistance to representatives of the authorities in the exercise of their official duties or resistance to a representative of the public engaged in maintaining law and order, or coercing them to perform clearly illegal acts with the use of violence or the threat of violence, is punishable by deprivation of liberty for a period not exceed-

ng three years, or corrective labour for a period not exceeding one year, or a fine not exceeding six rubles.

Any public insult to these persons in the execution of their duties entails corrective labour for a period not exceeding one year, or a fine not exceeding five rubles, or the application of measures of public influence.

Any *threat* of murder, infliction of grievous bodily injury, or destruction of property by fire against any person in office or public functionary, with the object of restricting their official or social activities or of altering them in the interest of the person making the threat, is punishable by deprivation of liberty for a period not exceeding eight months, or corrective labour for a period not exceeding one year, or public censure.

The infliction of light bodily injury, or beating, or the commission of other violent acts in respect of these persons is punishable by deprivation of liberty for a period not exceeding three years, or corrective labour for a period not exceeding one year.

Arbitrary assumption of the title or authority of a person in office coupled with the commission of any socially dangerous acts likewise entails criminal responsibility.

Other crimes in this group include the stealing or damaging of official papers, stamps, seals or forms, fabrication, preparation or uttering of forged documents, stamps, seals or forms, arbitrary seizure of land and unauthorised building, etc.

18. CRIMES AGAINST PUBLIC SECURITY, LAW AND ORDER, AND PUBLIC HEALTH

These crimes are prescribed by the criminal codes of the Union Republics. *Rowdyism*, i.e., premeditated acts rudely violating law and order and coupled with obvious disrespect for society, is one of the most dangerous crimes in this group. It is punishable by deprivation of liberty for a period not exceeding one year, or corrective labour

for a similar period, or a fine not exceeding five rubles, or public censure.

Malicious rowdyism is punishable by deprivation of liberty for a period not exceeding five years.

Petty hooliganism entails application of measures of public or administrative influence.

Petty hooligans to whom measures of public or administrative influence had been applied twice in the course of a year are liable to corrective labour for a period not exceeding one year, or a fine not exceeding five rubles.

Taking the law into one's own hands, i.e., the arbitrary exercise by a person of any real or supposed right, violating the order established by law and inflicting substantial harm on citizens, or state and mass organisations, is punishable by corrective labour for a period not exceeding six months, or a fine not exceeding five rubles, or public censure, or the application of measures of public influence.

Under the Criminal Code of the R.S.F.S.R. this group includes also threat of murder, infliction of grievous bodily injury or destruction of property by fire, if the fear that this threat would be carried out was justified; acquisition of property known to have been obtained by criminal means; inciting minors to crime; breaking city traffic rules; breaking safety rules in mining, building, or at enterprises with increased explosion hazards; breaking the rules of storage, use, stock-taking or transportation of explosives or radioactive substances, illegal carrying, storage, manufacture or sale of arms, munitions or explosives, practising medicine without authority, etc.

19. MILITARY CRIMES

The Law on Criminal Responsibility for Military Crimes, adopted at the Second Session of the Fifth Supreme Soviet of the U.S.S.R. in December 1958, covers the following military crimes:

1) crimes against the order of subordination and military honour (insubordination; failure to carry out an order; resisting a superior or coercing him into any breach of his official duties; threatening a superior; act of violence against a superior; insult by one member of the Armed Forces of another);

2) evasion of military service (absence without leave; unauthorised departure from a unit or any other place of service; desertion; unauthorised departure from a unit during military operations; evasion of military service by self-mutilation or in any other way);

3) encroachment on military property or breach of special duties in line of military service (squandering; loss; wilful destruction or damage of military property; violation of driving rules or use of vehicles, regulations governing flights and readiness for them, rules of navigation and service regulations);

4) breach of regulations governing military secrets (divulgence of military secrets or loss of documents containing military secrets);

5) crimes committed in an official capacity (abuse or excess in the exercise of authority, or careless discharge of the duties of military service);

6) crimes committed in the area of military operations (surrender or abandonment to the enemy of materiel; abandonment of a sinking warship; unauthorised abandonment of the field of battle or refusal to use a weapon; wilful surrender to the enemy; any criminal act of a member of the Armed Forces who is a prisoner of war; marauding; any act of violence committed in respect of the population in an area of military operations);

7) violation of international conventions (ill-treatment of prisoners of war; unauthorised wearing of the emblems of the Red Cross and Red Crescent and their misuse).

Chapter Eleven

CRIMINAL PROCEDURE

1. GENERAL RULES

The state combats crime through the courts, the Procurator's Office, investigators, state security organs, militia and other organs of inquiry. They have to perform a series of acts to establish the fact of the crime, discover the offender, and determine the penalty to be imposed on the strength of criminal law.

After receiving information that a crime has been committed, the investigator, for instance, commences the preliminary investigation: he inspects the place of the crime, summons and questions witnesses, detains suspects, etc. During the investigation of a criminal case, he has the right to demand of citizens that they take part in examinations and searches, and testify on the facts known to them; and of persons in office that they make available certificates and documents, etc. The organs of the militia, the investigator, the procurator and the court may make such demands on persons in office and other citizens only within the powers vested in them by law. The law also safeguards the interests of citizens who are summoned to take part in criminal proceedings.

Criminal procedure is investigation of criminal cases by organs of the militia, preliminary investigation, and the Procurator's Office, and trial by the court.

The law governing criminal procedure is made up of the

criminal laws of the U.S.S.R. and the Union Republics, which regulate the investigation and trial of criminal cases. It is based on the Constitution of the U.S.S.R., which lays down the principles underlying the structure and operation of the courts and the Procurator's Office.

The Constitution of the U.S.S.R. vests the Union with jurisdiction in promulgating the Fundamentals of Criminal Procedure of the U.S.S.R. and the Union Republics (approved by the Supreme Soviet of the U.S.S.R. on December 25, 1958), which the Union Republics take into account when adopting their criminal procedure codes. New criminal procedure codes were adopted by the Union Republics from 1959 to 1961. Other all-Union laws which regulate the activity of organs combating crime are the Fundamentals of the Judicial System; the Statute of the Military Tribunals; the Ordinance on the Supervisory Powers of the Procurator's Office in the U.S.S.R., and the Statute of the Supreme Court of the U.S.S.R.

The Constitution of the U.S.S.R. and the F.C.P. lay down the tasks, fundamental principles and provisions of Soviet criminal procedure. According to the F.C.P. the purposes of Soviet criminal procedure are speedy and complete disclosure of crimes, exposure of the guilty persons and guarantee of correct application of the law, so that every offender shall suffer just punishment, and no innocent person shall be arraigned or punished.

The Soviet lawgiver makes the point that criminal procedure must promote the strengthening of socialist legality, prevention and eradication of crime, and education of citizens in a spirit of undeviating observance of Soviet laws and respect for the rules of the socialist way of life.

Various working people's organisations extend enormous assistance to state agencies combating offences against socialist law and order. In conformity with the decisions of the Twenty-First Congress of the C.P.S.U., some functions of state agencies are being gradually transferred to mass organisations. An example is maintenance of law

and order and security by the Soviet public in conjunction with the organs of the court, the Procurator's Office and the militia.

The growing role of mass organisations and the public as a whole in maintaining and strengthening socialist legality is reflected in the new law on criminal procedure. Thus, Article 41 of the F.C.P. provides for the participation in the court trial of a prosecutor and a defence counsel who are nominated by mass organisations. Article 33 allows the application, as a preventive measure, of surety by a mass organisation, etc. These rules are being more and more widely applied in practice.

Comrades' courts set up at enterprises, establishments and house management offices, are important in strengthening socialist law and order. They examine cases of misbehaviour in which it is inexpedient to initiate criminal proceedings. Lately, state judicial organs have been referring to the comrades' courts considerable numbers of cases of offences which previously entailed criminal penalties. Another growing practice is the placing of offenders in the custody of mass organisations for their re-education.

Thus, in accordance with Article 9 of the Code of Criminal Procedure of the R.S.F.S.R. (CCP), the court, the procurator, and, with the consent of the procurator, also the investigator and the organ of inquiry have the right to discontinue the case, if, judging by the circumstances of the case, the crime committed and the person involved do not present a social danger. In that event they place the person committing the crime in the custody of the soliciting organisation or collective of working people.

A person previously convicted of the commission of a premeditated crime, or previously allowed surety, may not be allowed surety nor have his case dismissed on that ground.

If a person in respect of whom criminal proceedings have been instituted does not consider himself guilty or for some reason insists that the case be heard in court,

his case may not be dropped nor may he be put in the custody of anyone.

The victim is informed of the dismissal of a case, and is entitled within five days to appeal against the finding of the court or the decision of the procurator (investigator, organ of inquiry) to the higher court or higher procurator respectively.

If a person put in the custody of a collective fails to live up to the confidence placed in him, breaks his promise to reform, fails to observe the rules of the socialist way of life or leaves his place of work with the object of evading measures of public influence, the mass organisation or collective of working people standing surety for him passes a decision withdrawing their surety and accordingly notify the court or the procurator to consider the question of the guilty person's criminal responsibility. In that event the case may be reopened by a finding of the court meeting in administrative session, or by a decision of the procurator.

In accordance with Article 10 (CCP), when a person commits a minor crime or a crime not constituting a great social danger, when the fact of the crime is evident, and the person committing it can be reformed by measures of public influence, the court, the procurator and, with the consent of the procurator, also the investigator and the organ of inquiry, have the right not to institute criminal proceedings. In that event, they transmit the records to a comrades' court or a commission for the affairs of minors, or place the guilty person in the custody of a collective of working people or a mass organisation for reformation and correction.

According to Article 8 (CCP), the court, the procurator and, with the consent of the procurator, also the investigator, have the right to discontinue a criminal case in respect of a person under the age of 18 years who has committed a crime not constituting a great social danger, and to refer the case to a commission for the affairs of mi-

nors, if, judging by the circumstances of the case and the character of the offender, he can be reformed without the application of criminal punishment.

The accused and his legal representative, and also the victim, are informed of the dropping of the case before it is referred to a commission for the affairs of minors, and have the right, within five days, to appeal against the finding of the court, or the decision of the investigator or the procurator respectively to a higher court or a higher procurator.

Volunteer detachments for the maintenance of public law and order, set up early in 1959, are of considerable assistance to the court and organs of investigation in combating crime. Their members are forward-looking workers, collective farmers, students, school seniors and pensioners. Their main tasks are to maintain law and order, combat rowdyism, and help in the public campaign to spread the socialist rules of life. In all their activities volunteer detachments are guided by Soviet laws, whose protection they enjoy, and carry out their work in contact with mass organisations and administrative agencies.

Such are some of the forms of mass participation in the struggle to safeguard socialist legality.

In accordance with Article 102 of the Constitution of the U.S.S.R. and Article 7 of the FCP, justice in criminal cases is administered by the court alone. No person may be declared guilty of a crime and subjected to criminal punishment except by sentence of the court. The court, the procurator, the investigator, and the militia are, within the limits of their competence, duty bound to initiate criminal proceedings wherever the elements of a crime are revealed, and to take all measures prescribed by the law to establish the circumstances of the crime, the identity of those committing the crime, and also for their punishment.

Under Soviet law no person may be arraigned otherwise than on the grounds and in the manner established by law. In accordance with Article 127 of the Constitution of the

U.S.S.R. and Article 6 of the FCP, no person may be arrested except by order of the court or with the sanction of the procurator. The procurator is duty bound to release immediately any person unlawfully deprived of liberty or kept in detention longer than the term determined by the law or by the sentence of the court.

Justice is administered on the principle that all citizens are equal before the law and the court. The social, property or official status, nationality, race or religion of the accused or other parties in a case have no effect on the judgement of the court.

In conformity with the Constitution of the U.S.S.R., criminal cases in all courts without exception (including military tribunals) are heard by judges with the participation of people's assessors. In all courts of first instance criminal cases are heard by a judge and two people's assessors. People's assessors do not take part only in the hearing of cases on appeal by the parties or protest by the procurator in a higher court. But the higher court too tries criminal cases collectively: in cassation proceedings the bench consists of three members, and in supervision proceedings, of not less than three members. People's assessors have the same rights as the presiding judge in all questions arising at the hearing of the case and the judgement. The question of guilt or innocence of the accused and the penalty to be imposed is decided by a majority of the members of the court. People's assessors take an active part in the examination of all the circumstances of the case. If a people's assessor finds himself in the minority when passing the judgement, he has the right to append a dissenting opinion, which, while not made public, conveys to the higher court the considerations of the people's assessor. The presiding judge conducts the court proceedings but in all decisions has equal rights with the people's assessors.

Justice in the U.S.S.R. is administered by elective courts: both the judges and the people's assessors are elective

(C USSR 105-109). In the administration of justice, the judges are independent and subject only to the law (C USSR 112).

The sentence of a court or any of its acts or findings may be appealed against in a higher court, which may annul any judgement of the court contradicting the law, but which is not competent to pass a new sentence. It may refer the case for a new examination by the same court with a different panel of judges, calling the court's attention to the violations of the law. No organs of power or mass organisations have the right to issue instructions to the court concerning the judgement in a case or the reversal of a court sentence.

The proceedings are conducted in the language of the Union or Autonomous Republic, or Autonomous Region, or National Area, or of the majority of the local population (C USSR 110).

Persons taking part in the trial who do not know the language in which the proceedings are conducted have the right to make statements, testify, act and plead in court and submit petitions in their native language, and have the services of an interpreter. Documents concerning the investigation and the trial are handed to the accused in a translation into his native language or some other language that he understands.

All cases are heard in public, with the exception of cases where that is prejudicial to the preservation of state secrets. All persons wishing to attend a trial may do so. Cases may also be heard *in camera* by a motivated decision of the court when it deals with crimes committed by persons under the age of 16 years, sex crimes, and also with other cases where it is deemed necessary to prevent the spread of intimate information about those concerned in the case.

In all cases sentences are pronounced in public. In the trial of a case by a court of first instance the accused must be present in court. A case may be tried in the absence

of the accused only in exceptional instances specifically provided for by law.

One of the democratic principles of criminal procedure is the accused's right to defence (C USSR 111). This constitutional principle is fully embodied in the FCP and the codes of criminal procedure of the Republics. The accused has the right to know the charges brought against him and to give explanations concerning them; adduce evidence; submit petitions; acquaint himself with the material of the preliminary investigation on its termination; retain a defence counsel; participate in the trial in a court of first instance; challenge the court; appeal against the actions and decisions of the investigator, the procurator and the court. The accused has the right to the last word (FCP 21).

The law provides real guarantees of these broad rights. The investigator, procurator and the court are bound to ensure the accused the opportunity to rebut the charge by ways and means established by law, and also to protect his personal and corporeal rights (FCP 13). The court, the procurator, the investigator, and organs of the militia are duty bound to take all measures prescribed by law for a full, comprehensive, and objective investigation of the circumstances of the case, and to make known all circumstances convicting or exonerating the accused and also all aggravating and extenuating circumstances. These organs have no right to place the burden of proof on the accused. Under pain of criminal responsibility, it is prohibited to make the accused give testimony by the use of violence, threats or any other unlawful means (FCP 14).

Hence, the guarantees established by the law of the rights of the accused are also guarantees of justice, for they help discovery of the objective truth and pronouncement of an impartial judgement.

Lawyers and, with the permission of the court, close relatives of the accused and other persons may act as de-

fence counsel, with the right to participate in the case from the moment the accused is informed of the termination of the preliminary investigation and has been handed all the material of the case for his perusal. In cases involving juvenile delinquents and also persons who by reason of physical or mental disability are unable to avail themselves of their right of defence, the defence counsel is allowed into the case from the moment the charge is preferred.

The criminal procedure codes of the Union Republics prescribe obligatory participation of defence counsel in cases in which the procurator takes part, in cases of juvenile crime, as well as in cases involving persons who by reason of their physical and mental disability are unable to follow the court proceedings. Some criminal procedure codes make obligatory participation of defence counsel in other cases.

Thus, in accordance with Article 49 (CCP), participation of defence counsel is compulsory in the following instances:

- 1) in cases with the participation of the state prosecutor or a prosecutor nominated by mass organisations;
- 2) in cases of persons who are mute, deaf, blind or otherwise incapable of exercising their right to defence for physical or mental reasons;
- 3) in cases of minors;
- 4) in cases of persons who do not know the language of the judicial proceedings;
- 5) in cases of persons with clashing interests, of whom at least one has a defence counsel;
- 6) in cases of persons arraigned for crimes for which the penalty may be death.

Defence counsel may be invited by the accused or appointed by the court at his request. Representatives of trade unions and other mass organisations may act as defence counsel. They are duty bound to employ all ways and means provided for by the law to disclose circum-

stances exonerating the accused or mitigating his responsibility, and to afford the accused the necessary legal aid.

Defence counsel is given every opportunity to perform his duties. From the moment defence counsel is admitted to participation in the case he has the right to interview the accused; have access to all material of the case and copy out any information he may require; submit evidence to the investigator and the court; file petitions; participate in the trial; challenge the investigator, procurator, interpreter, expert, judges, and the secretary of the court. Defence counsel also has the right to appeal against the actions and decisions of the investigator, the procurator, and the court, regardless of whether such appeals have been made by the accused himself. In addition, with the sanction of the investigator, defence counsel may be present during the interrogation of the accused and during other acts of investigation carried out at the request of the accused or his counsel.

An advocate has no right to refuse the defence of an accused once he has accepted the duty.

The new law on criminal procedure has substantially broadened the rights of the injured party. The latter is a person who as the result of a crime suffers moral, physical or financial damage. He and his representative have the right to submit evidence; file petitions; acquaint themselves with the material of the case from the moment the preliminary investigation is terminated; participate in the examination of evidence submitted at the trial; challenge the investigator, procurator, expert, interpreter, judges, and secretary of the court; file complaints against the actions of the militia, investigator, procurator, and also appeal against the sentence and findings of the court and orders of the people's judge.

During the preliminary investigation and trial the injured party has the right to give testimony. In the trial of cases of insult, slander, and light bodily injury, the injured party has the right to support the charge personally or

through his representative. A person who has suffered material damage as the result of a crime has the right to bring, during the criminal proceedings, a civil action against the accused or against persons materially responsible for the actions of the accused; the action is examined by the court simultaneously with the criminal case.

The *civil plaintiff* or his representative has the right to submit evidence; file petitions; participate in the trial; request the organ of inquiry, the investigator, and the court to secure his claim; support the civil action; acquaint himself with the material of the case on the termination of the preliminary investigation; challenge the court; file complaints against the actions of the person conducting the inquiry, the investigator, the procurator, and the court, and also appeal against the sentence or that part of the findings of the court that concerns the civil action.

Parents, guardians, curators or other persons, and also institutions, establishments, and organisations that by law are financially liable for the damage caused by the criminal actions of the accused, may be summoned as *civil defendants*. The civil defendant or his representative has the right to protest the action brought; make statements on the substance of the claim; submit evidence; file petitions; acquaint himself with the material of the case within the limits prescribed by the law; participate in the trial; challenge the court; file complaints against the actions of the person conducting the inquiry, the investigator, the procurator, and the court, and also appeal against the sentence or that part of the findings of the court that concerns the civil action.

Supervision by the Procurator's Office over the strict observance of the law at every stage of criminal proceedings is a highly important aspect of Soviet criminal procedure. It is exercised by the Procurator-General of the U.S.S.R. either directly or through the procurators subordinate to him.

It is the duty of the procurator, at all stages of criminal

proceedings, to take timely steps to eliminate any infringement of the law, whatever its source, by means prescribed by the law of criminal procedure. The procurator exercises supervision over the legality of the actions in the conduct of an inquiry by the organs of the militia, and in the preliminary investigation by investigating officers, including the organs of state security.

The procurator supervises the legality of arrests made in the preliminary investigation. Without his sanction no person may be arrested by an investigator or the militia. The procurator exercises his authority in the criminal proceedings independently of all organs and persons in office, is subject only to the law and is guided by the instructions of the Procurator-General of the U.S.S.R. The decisions of the procurator, made in accordance with the law, are binding on all institutions, enterprises, organisations, persons in office, and other citizens.

Supervision over the activities of the judicial bodies of the U.S.S.R. and the judiciary of the Union Republics, within the limits established by the law, is effected by the Supreme Court of the U.S.S.R. The Supreme Courts of the Union Republics and the Supreme Courts of the Autonomous Republics exercise supervision over the activity of the judiciary of their respective Republics, and the regional courts, over the activity of the district people's courts:

Participants in a trial have *the right of challenge*. A judge, people's assessor, procurator, investigator or person conducting the inquiry, secretary of the trial, expert or interpreter may not participate in criminal proceedings and must withdraw, if he is personally, directly or indirectly, interested in the case.

2. EVIDENCE

Before a decision is made on the guilt or innocence of the accused the circumstances of the case must be brought to light.

During the preliminary investigation and the trial, the following must be proved:

- 1) the fact of the crime (time, place, manner, and other circumstances attending the commission of the crime);

- 2) the guilt of the accused in the commission of the crime;

- 3) circumstances affecting the degree and nature of the accused's responsibility;

- 4) the nature and amount of the damage caused by the crime.

The investigator and the court base their conclusions concerning the guilt or innocence of the accused on verification and assessment of the evidence. Evidence in a criminal case is facts on the basis of which the organ of inquiry, the investigator, and the court establish, in accordance with the law, the existence or absence of a socially dangerous act, the guilt of the person committing the act, and other circumstances of importance in making a correct decision in the case.

The investigator, the organs of the militia, the procurator, and the court establish the facts in the case from the testimony of witnesses, the injured parties, suspects, accused, expert evidence, exhibits, the records of the investigation and court proceedings, and other documents.

The court, the investigator, and the person conducting the inquiry assess the evidence in accordance with their convictions based on a comprehensive and objective examination of the circumstances of the case in their totality, and are guided by the law and by the socialist concept of justice. No evidence has predetermined value for the court, the procurator, the investigator or the organs of the militia.

The investigator, having received information that a crime has been committed, inquires as to the persons who may be of help to him in establishing the circumstances of the case, and summons them as witnesses. To obtain exhibits the investigator inspects the place of the crime and

makes searches and seizures. He requests written documents from state establishments and persons in office.

For the evidence collected by the investigator to be valid in court it must be presented in the form of such documents as records of the interrogation, search, inspection, etc. The law requires all documents of investigation to be signed by witnesses, the investigator, and other participants in the case, and to be without erasures, uninitialled alterations, etc.

Each piece of evidence must be verified and assessed against all the data available in the case. Thus, the alibi of the accused must be verified by interrogation of any of the other persons concerned; the testimony of each witness must be checked against the testimony of other witnesses, etc.

The investigator and the court assess all the evidence in order to arrive at a decision whether or not there has been a crime, and whether the accused is guilty or innocent. The investigator assesses the evidence in order to decide whether to discontinue the proceedings or to take the case to court. The court, which makes the final assessment of the evidence collected in the course of the preliminary investigation and trial, decides on the guilt or innocence of the accused. Each bit of evidence is assessed by the court against all the circumstances of the case; it is not examined in isolation but together with other evidence and with an eye to the circumstances of the case.

Soviet judges are not bound by any formal requirements in the evaluation of the circumstances of a case. In accordance with Article 71 (CCP), the court, the procurator, the investigator or the person conducting the inquiry, guided by the law and their socialist concept of justice, assess the evidence on the strength of their convictions based on a full, comprehensive, and objective examination of the circumstances of the case in their totality. No evidence has predetermined value for the court, the procurator, the investigator, and the person conducting the in-

quiry. The convictions of Soviet judges are bound up with their concept of justice. The court may give credence to two witnesses who declare the accused guilty, and give no credence to three witnesses asserting his innocence, and vice versa. Everything depends on the evidence that carries greater conviction with the judges.

The collection of evidence before the trial is performed in the preliminary investigation. In more complicated cases the investigation is carried out by investigators, and otherwise, by the organs of the militia. To obtain evidence the investigator takes steps to find eyewitnesses of the crime, obtain exhibits, etc.

The results of the investigation and the proceedings in court are entered in the *records*. These enable the procurator, the court and the accused to learn of the testimony of the witnesses, the results of the search of the accused, inspection of the scene of the crime, etc.

The records are drawn up with strict observance of the rules established by law, which is of great importance. The record of the proceedings must be a faithful reflection of the investigation and trial. Inaccurate records of the testimony of witnesses may mislead a court, especially if a witness is unable to attend the trial in person. Absence of signature of the person interrogated in the record of the interrogation entitles the accused to question the evidence.

The records are signed by witnesses, the accused, and by the investigator, in that order. To preclude substitution of the original, the witness or the accused signs every page of the records. It is also noted if the interrogation was carried out with the help of an interpreter, who also signs the record of interrogation.

The law requires the investigator and the procurator to enter *decisions* concerning important acts of investigation. The investigator enters decisions concerning searches and seizures, appointment of experts, the choice of preventive measures, discontinuance of a case, etc. They are signed

by the investigator and are made known only to the persons concerned.

The *indictment* is the culminating stage of the investigation in which the investigator sets forth the particulars of the crime and the evidence collected in the case, and specifies the article of the criminal code covering the acts of the accused.

The *testimony of witnesses* is a type of evidence. A witness is a person who is aware of facts relevant to a criminal case. The testimony of witnesses is the most common type of evidence. In most cases it is the only type of evidence, with the exception of the testimony of the accused, the injured persons, and the suspects.

Upon receiving the summons, the witness must appear before the investigator or in court. If he fails to appear without good reason he may be forcibly brought through the militia and is criminally responsible for failure to appear. It is the duty of the witness to give all information at his disposal concerning the case and the accused.

A confrontation is arranged when there are essential contradictions in the testimony of two witnesses or the accused. Before interrogation witnesses are forewarned of criminal liability for refusal to testify and for false testimony. Witnesses are not liable for errors in testimony without intent to give false evidence.

The investigator has no right to force the witnesses to give evidence by the use of violence or threats. Witnesses have the right to file complaints with the procurator against the actions of the investigator which hamper them or invade their rights.

Witnesses summoned to testify before an investigator, organs of the militia or the court have the right to receive compensation for expenses incurred in travelling from their place of residence to the place of summons and back (when they reside more than three kilometres away). In the event the witness is required to live in the place of summons for more than 24 hours he is paid his actual

lodging expenses and given a daily allowance. Besides, average earnings are retained at the place of work for workers who are summoned as witnesses.

A witness residing in another town may be interrogated at his place of residence by the investigator or organ of the militia.

Experts are appointed to clarify questions arising during the investigation and the hearing of a criminal case which require special knowledge in science, engineering, and the arts. For example, special medical knowledge is required to determine the seriousness of a wound; technical knowledge, to determine the causes of a plane crash, etc. An expert must be summoned to determine the cause of death or the seriousness of bodily injury, and, when the need arises, to determine the mental state of the accused or witness. Experts are persons invited to examine circumstances whose assessment requires special knowledge, and the procedure is known as *expertise*. The result of an expert's work, his *findings*, are regarded as evidence.

Experts submit findings on the matters referred to them. The accused has the right to ask questions of the expert, which, however, may be overruled by the investigator. Like all evidence the findings of the expert are given a critical assessment.

The expert has essentially the same rights and obligations as a witness. He is remunerated for his work, the amount being determined by the investigator or by a court according to special regulations. The expert must have the material required for the expertise (the corpse, documents, etc.) and also the material of the investigation.

A person interested in the outcome of the case, or a person who has performed an audit in the establishment concerned, may not be admitted as an expert.

The expert opinion is entered in the record, with the findings of the experts and descriptions of the methods used appended. The record is signed by the investigator

and the experts, and also by the accused, if present at the expertise.

In many cases the circumstances at the scene of the crime, the state of the several objects, and the traces left by the criminal have the value of evidence. They are recited in a record of the inspection, which is also a part of the evidence. Other types of inspection may be of equal value.

The inspection must be made in the presence of two witnesses (who are not interested in the outcome of the case), who sign a written record of the proceedings. In cases of murder, suicide or accident resulting in death, the inspection is made by the investigator and a forensic medical expert. When necessary, documents are examined in special laboratories.

Exhibits are objects allowing conclusions of substance to the case. They include the instruments of the crime (gun, knife, etc.), objects of the crime (forged documents, stolen things, etc.), and things which retain any trace of the crime or which are clues. Exhibits are examined in the presence of witnesses and the result is entered in the record.

After the termination of the case the exhibits are disposed of by the court or the investigator. The instruments of the crime and things which may not be in the possession of persons without a proper licence (arms, poisons, explosives, etc.) are confiscated and handed over to the appropriate state agencies. Things of no value are destroyed. Other things are returned to their owners.

An investigator may order a *medical examination* of living persons to determine the gravity of a wound, the state of intoxication, to discover traces of rape, to determine age by outward appearance, etc. Depending on the purpose, it is performed either by a doctor or a medical board. The results are entered in the record. This may take the form of a record of inspection, or a medical certificate issued by the doctor to the organ of inquiry or the court.

A search may be carried out by the organs of the militia or the investigator to obtain exhibits or find an accused in hiding. Searches are carried out by a decision of an organ of the militia or the investigator, and only with the sanction of the procurator. In urgent cases searches may be made by the organ of inquiry or the investigator without the sanction of the procurator, but the latter must be informed of this action within 24 hours. Seizure of correspondence and its extraction at postal and telegraph offices are made only with the sanction of the procurator or by a decision of the court. Searches and extractions are performed in the presence of witnesses. A written record is signed by the person subjected to search, the witnesses and the investigator. A copy of the record is given to the person searched.

3. INQUIRY AND PRELIMINARY INVESTIGATION

Upon receipt of information that a crime has been committed, the procurator, investigator or organ of the militia must verify whether the reported acts contain the elements of crime as prescribed by the Criminal Code. If that is so, the procurator may initiate criminal proceedings, and with that aim in view he sends the material received (statements, auditing records, etc.) to the investigator or the organs of the militia for preliminary investigation.

But criminal proceedings are not initiated in every instance, because some acts, while specified in the Criminal Code, do not entail criminal responsibility, being manifestly insignificant and not resulting in harmful consequences.

Criminal proceedings may not be commenced *after the death of the accused*. Some cases may be initiated only upon a *complaint by the injured party* (light bodily injuries caused with intent, but not resulting in loss of health; wilful beatings, blows and other violent actions entail-

ing physical pain; insult of one person by another; slander; and rape, except group rape which results in the death of the victim). There can be no criminal prosecution when the period of limitation has run out and the criminal has not committed a fresh crime. Finally, an act of *amnesty* or pardon rules out criminal responsibility.

There are other circumstances when a criminal case may be discontinued.

According to Article 6 (CCP), the court, the procurator, and, with the consent of the procurator, also the investigator and the organ of inquiry have the right to discontinue a criminal case, if it is recognised that because of the changed situation by the time of the inquiry, preliminary investigation or trial the act committed by the guilty person has ceased to be a social danger, or the person in question has ceased to be socially dangerous.

According to Article 7 (CCP), the court, the procurator, and, with the consent of the procurator, also the investigator and the organ of inquiry, may discontinue a case involving a minor crime and refer it to a comrades' court.

The accused and the injured person are informed of the discontinuance of the case and its transmission to a comrades' court. They have the right, within five days, to appeal against his decision to a higher court or a higher procurator respectively.

In the absence of other grounds for the commencement of a criminal case, the procurator or the investigator (or organ of the militia) informs the applicant, or other persons concerned, of this. The latter have the right to appeal to higher organs against the refusal to institute criminal proceedings.

Cases may be investigated by an organ of inquiry, but the more serious crimes are subject to preliminary investigation.

Preliminary investigation is performed by an investigator; a procurator may undertake to perform the whole or part of a preliminary investigation.

Organs conducting an inquiry are the militia, and other establishments and organisations authorised by the law, as well as commanders of military units, formations, and military establishments.

When a preliminary investigation is not obligatory, the trial is based on the record of the inquiry, which is submitted by the organ of inquiry to the procurator, with whose approval the case is laid before the court.

According to Article 117 (CCP), the following are organs of inquiry:

- 1) the organs of the militia;
- 2) commanders of military units, formations and the chiefs of military establishments—in cases of all crimes committed by members of the Armed Forces subordinate to them, and also by reservists during training musters; in cases of crimes committed by workers and other employees of the Armed Forces in the performance of their duties or on the territory of a unit, formation or establishment;
- 3) state security organs—in cases referred to their jurisdiction by the law;
- 4) chiefs of labour correction establishments—in cases of crimes against the established order of service committed by employees of these establishments, and also in cases of crimes committed on the territory of the establishments;
- 5) state fire prevention organs—in cases of fires and violation of fire prevention rules;
- 6) organs of the border guard—in cases of violation of the state frontier;
- 7) captains of sea-going vessels on long voyages, and the chiefs of wintering stations in the absence of transportation lines.

It is the duty of the organs of inquiry to start detection operations and take other measures prescribed by the law of criminal procedure to disclose the crimes and the persons committing them. It is also their duty to take all measures necessary to prevent and stop crimes.

The activity of the organs of inquiry differs according to whether a case requires preliminary investigation or not. Where there are signs of a crime for which a preliminary investigation is obligatory, the organ of inquiry initiates criminal proceedings and, guided by criminal procedure, carries out urgent acts of investigation to establish and record traces of the crime: inspection, search, seizure, examination, detention and interrogation of suspects, and interrogation of injured persons and witnesses.

The organ of inquiry immediately informs the procurator of the discovery of a crime and the opening of the inquiry.

With the performance of urgent acts of investigation, the organ of inquiry transmits the case to an investigator.

Under Soviet law the investigator is independent. In the course of a preliminary investigation all decisions concerning the line of investigation and the acts of investigation are, except where the law requires the sanction of the procurator, taken independently by the investigator who is fully responsible for their legality and timeliness.

In the event of the investigator's disagreeing with the instructions of the procurator concerning the arraignment of the accused, the qualification of the crime or the scope of the indictment, the dispatch of the case for adjudication in court or the termination of the case, he may submit the case to a higher procurator with his objections made in writing.

The investigator has the right to direct the organs conducting the inquiry to perform a search or other acts of investigation and to require their co-operation in carrying out individual acts of investigation. The instructions and directions of the investigator are binding on the organs conducting the inquiry.

The orders of the investigator made in accordance with the law concerning criminal cases under his jurisdiction are obligatory and must be implemented by all institu-

tions, enterprises, organisations, persons in office, and other citizens.

The investigator may start the preliminary investigation at the request of the procurator or on his own initiative. He begins by determining the guilty persons. When he receives information warranting the assumption that the crime has been committed by a certain person, he institutes criminal proceedings against the person in question. The charge is in the form of a decision, which is made known to the accused and signed by him.

The accused has certain rights enabling him to defend himself against the charges preferred, to take part in the investigation and exercise influence on it.

After the charge is made, the organ of inquiry must interrogate the accused within 24 hours. The accused has the right to testify, but is not obliged to do so. In contrast to witnesses, the accused is not criminally responsible for refusing to testify or giving false evidence. In the event illegal measures are used in the interrogation to force the accused to give evidence, the person conducting the investigation is held criminally responsible.

The accused has the right to set down his testimony in writing himself. If his testimony is taken down by the interrogator, the accused has the right to demand that the necessary corrections and changes are entered in the record. The record of the interrogation is signed by the accused and the interrogating officer.

Where there are sufficient grounds to assume that the accused will evade inquiry, preliminary investigation or trial, or will prevent the establishment of the truth in a criminal case, or will engage in criminal activity, and also to ensure the execution of the sentence, the person conducting the inquiry, the investigator, the procurator or the court have the right to apply one of the following preventive measures in respect of the accused: a signed undertaking not to leave the place, surety by a person or mass organisation, and detention in custody.

In the R.S.F.S.R., the procurator or the court may allow bail as a preventive measure.

Supervision by the command of the military unit may be applied as a preventive measure in respect of members of the Armed Forces.

Where there is no ground for applying preventive measures, the accused undertakes to appear when summoned and to report any change of address.

In exceptional cases, the preventive measure may be applied to a suspect before the charge is preferred. In that case, the charge must be made within 10 days from the day the preventive measure is applied, otherwise the preventive measure is cancelled.

According to Article 98 (CCP), in the event a person detained in custody has any minor children who are left without supervision, it is the duty of the organ of inquiry, the investigator, the procurator or the court to place them in the care of relatives or other persons or establishments. If a person detained in custody has any property or dwelling-house which is left unattended, they are duty bound to take steps to safeguard them. The organ of inquiry, the investigator, the procurator or the court informs the persons detained in custody of the measures taken.

Detention in custody is used as a preventive measure only in cases of crimes entailing deprivation of liberty. Persons accused of committing any of the graver crimes listed in the law may be taken into custody on the sole motive of the dangerous nature of the crime.

Detention in custody during the investigation may not continue for more than two months. Only in particularly intricate cases the term may be prolonged by the procurator to three or six months. Prolongation in exceptional cases for an additional period of not more than three months requires the sanction of the Procurator-General of the U.S.S.R.

The organ of inquiry or the investigator has the right to detain a person suspected of having committed a crime

punishable by deprivation of liberty only on one of the following grounds:

- 1) a person is caught in the act of committing the crime or immediately after its commission;

- 2) eyewitnesses, including the injured party, directly identify that person as the one who has committed the crime;

- 3) obvious traces of the crime are discovered on the person of the suspect, on his clothing, or in his habitation. Detention may be applied also to suspects without a permanent place of residence, or to persons whose identity has not been established.

A person detained on suspicion of having committed a crime has the right to file a complaint against the action of the person conducting the inquiry, the investigator or the procurator.

In every case of detention of a person on suspicion of having committed a crime, the organ of inquiry or the investigator must draw up a statement showing the grounds and motives for the arrest and notify the procurator within 24 hours. Within 48 hours from the moment he is notified of the detention of a person the procurator is duty bound either to endorse the detention or order the release of the arrested person.

The investigator issues an order on the preventive measure, specifying the charges against the accused and the reasons for the choice of the preventive measure.

If in the course of the investigation the need for the preventive measure becomes superfluous, the investigator withdraws it by another order. Depending on the course of the investigation a preventive measure may be substituted by a lighter or heavier measure. The procurator has the right to direct the organs of inquiry to select, withdraw or modify the preventive measure. His directions are obligatory for all organs of inquiry.

When there is no need for preventive measures, the organ of inquiry takes a signed pledge from the accused

to appear at the investigation or in court, with the undertaking to report changes of address.

The preliminary investigation culminates in the dispatch of the dossier with the indictment for the commencement of the trial of the accused or in the dismissal of his case.

The accused and the persons and establishments concerned are notified of the dismissal of the case. A protest against the decision to dismiss the case may be filed with the procurator.

The investigation may be suspended in the following cases:

1. when the accused has escaped from investigation or trial, or when for other reasons his whereabouts is unknown;

2. when the accused suffers a mental or any other grave illness certified by a doctor employed at a medical institution;

3. when the person to be charged as the accused has not been identified.

Under any of these circumstances the investigator enters a motivated decision to suspend the preliminary investigation. When there are two or more accused persons in the case, but the grounds for suspension do not apply to all the accused, the investigator may single out some of the accused and suspend the case in respect to them or suspend proceedings in the whole case.

Before the preliminary investigation is suspended the investigator must perform all the acts of investigation that can be performed in the absence of the accused, take all measures to find him, and also establish the identity of the person who has committed the crime. An investigation is suspended in the event of the illness of the accused until his health is restored. An investigator has the right to place the accused in a medical institution to establish the nature of his illness. When the circumstances necessitating suspension of the investigation disappear, the investigation is resumed by an order of the investigator.

A procurator, having received a case from the investigator and being in agreement with the indictment, endorses it by a resolution and sends the case for trial. If the procurator believes that there are no grounds for the trial of the accused, he dismisses the case. If he finds the investigation incomplete, he returns the case for further investigation.

4. ADJUDICATION OF CASES IN COURT AND EXECUTION OF THE SENTENCE

The case with the indictment approved by the procurator is sent to the *court* which has cognisance of the case. Cognisance is determined by the nature of the case and its specific features.

Where there are sufficient grounds for a case to be adjudicated in court, the judge, without previously deciding on the question of guilt, orders the arraignment of the accused.

In the event of the judge disagreeing with the conclusions arrived at in the indictment and also in cases where it is necessary to change the preventive measure that has been adopted in respect of the accused, the case is examined at an administrative sitting of the court. It decides on the arraignment of the accused or the return of the case for further investigation, or dismisses the case, and also decides on the preventive measures. In the event of the court deciding on the arraignment of the accused it may, at an administrative sitting, exclude some counts from the indictment or apply a criminal law involving a milder punishment, without changing the formulation of the indictment. The accused is given a copy of the indictment not later than three days before his case is heard in court.

The trial is the principal stage of criminal proceedings, where the court finally decides the case in substance. The presiding judge appoints the day for the trial and orders

the accused, witnesses, and experts to be summoned to court. In every case the trial must be conducted without interruption, with the exception of time allotted for rest. Before the termination of a case already begun, judges are not permitted to examine other cases.

The court sittings are directed by the presiding judge or member of the panel, who removes from the judicial investigation everything extraneous to the case and leads the proceedings towards a correct decision. The presiding judge acts on behalf of the court as a whole. All important questions (postponement, summoning witnesses, permission to file petitions by the parties, etc.) arising in the proceedings are settled by the full bench.

A court of first instance, in hearing a case, must examine the evidence of the case: interrogate the accused, the injured persons, and witnesses, hear the opinion of experts, examine the exhibits, and read out records and other documents.

The *prosecutor*, who usually takes part in the more important cases, is a prominent figure at the trial. The procurator acts as the state prosecutor, and supporting the accusation is one of his major functions. The injured person may appear as a private prosecutor in cases involving insult, slander, and the infliction of light bodily injuries. Prosecutors may be appointed by mass organisations.

As prosecutor for the state, the procurator takes an active part in the trial. He has the right to challenge any member of the bench and gives the court his conclusions on the possibility of hearing a case in the absence of witnesses who fail to appear, requests new evidence, etc. He takes part in interrogating the accused and the witnesses, and in examining the evidence.

In supporting the indictment on behalf of the state the procurator insists on the conviction and punishment of the accused whose guilt has been proved. When the facts established at the trial refute the indictment, the procurator must withdraw it. The procurator's speech for the prosecu-

tion is the result of his activity in exposing the person who has committed the crime. In it he gives the final formulation of the charge against the accused, analyses the evidence, defines the social danger presented by the crime, and demands of the court the proper punishment.

The *accused* is the central figure of the trial. Every bit of evidence is examined and verified in his presence and with his participation. He has the right to give explanations to the court concerning the testimony of witnesses, experts, and other accused at any time during their interrogation. He has the right to take part in the examination of the exhibits. An accused who refuses to have a defence counsel in a trial with the participation of a prosecutor has the right to make a speech in his own defence, and to sum up his case. The lawyer and the defence counsel nominated by a mass organisation were discussed above.

The prosecutor, accused, defence counsel, injured person, civil plaintiff and civil defendant, and their representatives at the trial have equal rights in submitting evidence, participating in its examination and filing petitions.

A case is examined in court only insofar as it concerns the accused and only in accordance with the indictment on which they have been arraigned.

Alterations of the indictment by the court are permitted only in cases where they do not worsen the position of the accused and are not an infringement of his right to defence. Otherwise, the court sends the case back for a fresh preliminary investigation.

The court proceedings open with the preliminaries (a roll-call of the parties and witnesses, discussion of challenges to the court and individual judges, etc.) verifying the necessary conditions for the hearing of the case.

The judicial investigation opens with the reading of the indictment. The chairman of the court explains to the accused the substance of the charges against him and asks him whether he pleads guilty or not guilty, and whether he has any statements on the case.

The accused is first interrogated by the members of the bench and then by the procurator and the defence counsel.

The witnesses are interrogated separately, and are not present in the courtroom before going on the witness stand. In case of necessity the court may interrogate the witnesses and the accused in confrontation.

If after the interrogation of the accused, witnesses, and experts the parties do not submit a petition for an additional judicial investigation, the presiding judge announces the court investigation completed and the court then hears the pleadings of the parties: the procurator's speech for the prosecution is followed by the speech of the defence counsel. The parties may exchange remarks on their speeches. When the pleadings are concluded the presiding judge gives the accused the last word, and the court then retires to confer on the judgement.

No one is allowed to enter the chamber in which the court is discussing the judgement: secrecy is designed to protect judges against outside pressure and to create a fitting atmosphere for the exercise of the court's important and complex duties.

The court's decision concerning the guilt or innocence of the accused (verdict) and the penalty imposed on the accused if the indictment is deemed proved (sentence) are known as the *prigovor*.¹

The judgement of the court must be based on law and motivated. The court must base its judgement exclusively on the evidence examined at the trial. The verdict is either guilty or not guilty.

A verdict of guilty may not be brought in on assumptions and is passed only in cases when the guilt of the accused in the commission of the crime has been proved at the trial. The court brings in a verdict of guilty without

¹ The jury system is unknown to Soviet court practice. A criminal trial ends with a single decision (Russ. *prigovor*) adopted by the whole bench (the judge and the two people's assessors), which combines the verdict and the sentence.—Ed.

passing sentence if, at the time the case is examined in court, the act has ceased to be socially dangerous or the person committing it has ceased to be a danger to society.

A verdict of not guilty is brought in if the fact of the crime has not been established, if the actions of the accused do not constitute *corpus delicti*, and also if the accused's participation in the commission of the crime has not been proved.

The presiding judge pronounces the sentence, which is heard standing by those present in court. The Supreme Court of the U.S.S.R. and the military tribunals pronounce their sentences in the name of the Union of Soviet Socialist Republics, and all the other courts, in the name of a Union Republic. The sentence must state the procedure and time of appeal. The proceedings are concluded with the pronouncement of the sentence.

In the event of acquittal, the accused is immediately released from custody. When the verdict is guilty and the sentence involves deprivation of liberty, the court decides on the preventive measure to be applied to the convicted person until the sentence becomes final.

5. PROCEEDINGS IN COURTS OF SECOND INSTANCE AND BY WAY OF SUPERVISION

Proceedings for cassation and by way of judicial supervision are aimed at ensuring legality in judicial practice, correcting any errors of the lower courts, and improving their operation.

The Fundamentals of Criminal Procedure of the U.S.S.R. and the Union Republics lay down the key provisions governing proceedings for cassation and by way of supervision.

The sentences of the Supreme Court of the U.S.S.R. and the Supreme Courts of the Union Republics are not subject to cassation appeals or protests.

The convicted person, his defence counsel and legal representative, and also the injured party have the right to appeal for the cassation of a sentence. The Fundamentals also give the right of appeal for cassation to any citizen who suffers physical or moral injury or loss of property from the acts of the convicted person.

Every unlawful or unfounded sentence must be protested by the procurator in a cassation proceeding.

The civil plaintiff, the civil defendant and their representatives have the right to appeal against the part of a sentence that concerns the civil claim. It is their duty to help the court to establish only the corporeal effects of the crime committed, and to determine the extent of the injury for which compensation is to be recovered from the convicted person.

The Fundamentals introduce a new figure into the proceedings, namely, the civil defendant, i.e., a person bearing financial liability for the actions of the accused (the parents, for a juvenile offender; establishments or undertakings which are sources of increased hazard, for the actions of their workers and clerical staff, etc.).

A person acquitted by the court has the right to appeal for the cassation of that part of the verdict which concerns the motives and the grounds of the acquittal, insofar as it may contain motives denigrating the acquitted person or leaving doubt of his innocence.

The periods of limitation for the filing of cassation appeals and protests and their examination, and also the procedure for filing protests and appeals against decisions and orders of the courts, are laid down by the legislation of the U.S.S.R. and the Union Republics.

The criminal procedure codes of the Union Republics do not stipulate any special form of appeal for cassation, and this allows persons who are not versed in the law to set forth their considerations concerning the illegality and groundlessness of the court sentence.

In the Russian Federation, appeals and protests against

the sentence of a court of first instance may be made within seven days from the day the sentence is announced, and for convicted persons detained in custody, within the same period from the day they are handed a copy of the sentence.

In the appeal period the case may not be removed from the court. The procurator, and also the convicted person, the acquitted person, their defence counsels and legal representatives, the injured parties, the civil plaintiff, the civil defendant and their representatives may examine in court the record of proceedings in the case and the appeals and protests filed.

An appeal or protest filed after the lapse of the period is returned to the person filing the appeal or protest.

Additional cassation appeals and protests and written objections to them may be filed with the court of cassation before the examination of the case.

In examining the case in a cassation proceeding, the court checks the legality of the sentence and the grounds for it on the basis of the material of the case and any material additionally submitted. The court is not bound by any reasoning put forward in the appeal or protest, and examines the case as a whole in respect of all the convicted persons, including those who have not appealed and in respect of whom no protest has been made.

The question of summoning the convicted person to a session of the court examining a case on appeal is decided by that court. If the court deems it necessary to hear the convicted person, he has every opportunity of making statements. Defence counsel may participate in a cassation proceeding.

The accused, his defence counsel and legal representative, the injured person, the procurator, the civil plaintiff, and the civil defendant have the right to submit to the session of a higher court examining a case on appeal or protest only additional written material (certificates, documents, etc.).

Cases in appeal are examined in open session, unless there are reasons for which a case should be heard *in camera* in a court of first instance.

Cassation proceedings open with a report by one of the members of the bench concerning the substance of the case and the principal arguments of the appeal or protest.

The convicted or acquitted person, their defence counsels or representatives, the civil plaintiff or the civil defendant, the injured person and his representatives, if they are present in court, may make statements presenting arguments not set forth in the cassation appeal, and also submit new written material. In the event written material is submitted to the court, it is made available to the other persons concerned in the case, who are present, and also to the procurator.

The procurator gives his conclusion concerning the grounds of the motives set forth in the appeal for cassation and the legality of the sentence appealed or protested and the grounds for it, and accordingly makes known to the court his considerations on whether the sentence should be made final, or should be annulled or modified. A statement is then made by the accused or acquitted person or their defence counsel. The proceedings are similar in the examination of a case protested by a procurator.

The court retires to confer on its finding, and then makes it public.

Article 49 of the Fundamentals of Criminal Procedure establishes the grounds for cancelling or altering a sentence in cassation or supervision proceedings. These grounds are:

- 1) one-sidedness or incompleteness of the preliminary investigation or juridical investigation;
- 2) discrepancy between the conclusions of the court, as recorded in the sentence, and the actual circumstances of the case;
- 3) substantial infringement of the law of criminal procedure;

- 4) incorrect application of the criminal law;
- 5) disparity between the penalty imposed by the court and the gravity of the crime or the character of the convicted person.

The preliminary investigation or the judicial proceedings are deemed incomplete if witnesses indicated by a participant in the proceedings were not interrogated, or evidence indicated by him was not collected in confirmation or refutation of circumstances essential to the decision of the case; if circumstances specified in the finding of the court which ordered an additional investigation or a retrial of the case were not examined; if the need to investigate any circumstances arises from new material submitted to the court in the hearing of a case in appeal.

The sentence is cancelled when there is a discrepancy between the conclusions of the court, as recorded in the sentence, and the actual circumstances of the case, if these conclusions are not supported by the evidence examined at the trial, or if the court has not taken into account circumstances of the case which could have had an essential effect on its conclusions. The sentence of the court is also annulled when there is contradictory evidence of essential importance to the conclusions of the court, if the sentence fails to state the grounds on which the court accepted one part of the evidence and rejected the other. A sentence is also annulled if the conclusions of the court contain essential contradictions or are clearly unconvincing.

However, a sentence is annulled on these grounds only when the essential contradictions discovered could have had an effect on the decision concerning the guilt or innocence of the accused, the correct application of the criminal law, or the determination of the penalty.

Article 345 of the Code of Criminal Procedure of the R.S.F.S.R. establishes unconditional grounds for the annulment of a sentence (non-dismissal of a case by a court despite the existence of grounds entailing such dismissal; unlawful composition of the court; examination of a case

in the absence of the accused when his presence is prescribed by law; examination of a case without the participation of a defence counsel when the law stipulates such participation; violation of secrecy in the process of determining the sentence; lack of signature of any of the judges; absence of the records of the trial).

Incorrect application of the law is failure by the court to apply the criminal law which should have been applied; application of a law subject to amendment; application of a law not subject to application; and also incorrect interpretation of the law.

Since the Fundamentals of Criminal Legislation of the U.S.S.R. and the Union Republics (Art. 7) recognise as a crime only an act dangerous to society, prescribed in criminal law, and do not allow the application of the criminal law by analogy, it is highly important that a court sitting in a cassation proceeding should verify whether the criminal law has been applied correctly.

One of the grounds for appeal for cassation is disparity between the penalty imposed by the court and the gravity of the crime or the character of the convicted person (FCP 49). This provision accords with the spirit of Article 20 of the Fundamentals of Criminal Legislation concerning the purpose of punishment, which is not mere retribution for the crime committed but is also aimed at reforming and re-educating the convicted person; and Article 32, which binds the court imposing punishment to give consideration to the character of the guilty person.

Article 45 of the Fundamentals of Criminal Procedure specifies the effects of examination of cases on appeal for cassation. The higher court, having examined a case on appeal or protest, must adopt one of the following decisions:

- 1) leave the sentence unchanged, and dismiss the appeal or the protest;
- 2) annul the sentence and refer the case for a fresh investigation or a new trial;

- 3) annul the sentence and dismiss the case;
- 4) make changes in the sentence within the limits prescribed by law.

Article 46 of the Fundamentals says that in the examination of a case on appeal the court may not increase a sentence or apply a legal provision covering a graver crime.

In the event the court discovers grounds for applying a law on a graver crime, the sentence is annulled on the protest of a procurator or appeal of the injured party against the mildness of the sentence, and the case is sent to a court of first instance where, after a new examination, the initial penalty may be increased.

Article 51 says that the directions of a court examining an appealed case are obligatory when a fresh investigation is made or the case is re-examined in court. Since the court examining an appealed case is in possession only of the material of the case and the new written material submitted to it by way of appeal, it has no right to establish or consider as proved facts that are not recorded in the sentence of the court of first instance or were rejected by it. Nor has a court sitting in a cassation proceeding the right to decide beforehand questions of whether the charge is proved or not proved, of the authenticity or unauthenticity of evidence, the priority of some evidence over other, or of the correct application by the court of first instance of this or that criminal law or penalty.

The content of the finding of a court in a cassation proceeding is highly important in improving the work of the lower courts. Its directions to the court of first instance must be clear, intelligible and must not decide beforehand the conclusions of the court of first instance.

A court of second instance also has the right to set forth in a special finding the legal infringements made at the preliminary investigation or in the criminal proceedings of a court of first instance, even when such infringements do not entail annulment of a sentence.

In a special finding the court may draw attention to the

shortcomings in the work of any state or mass organisation, which were discovered during the trial and were conducive to the commission of crimes.

The Fundamentals of Criminal Procedure define the principal aspects of *proceedings by way of judicial supervision*, a special feature of Soviet criminal procedure.

The institution of judicial supervision in Soviet criminal procedure serves as an additional guarantee of the interests of the state, the rights and legitimate interests of citizens, public and mass organisations, and is a means of reinforcing legality.

Proceedings by way of supervision allow the rectification of court errors, annulment of unlawful or groundless sentences, even when they had been re-examined on appeal for cassation.

In the interest of the accused, the Fundamentals set periods of limitation for filing a protest by way of supervision against sentences that have become final (Art. 48). Review by way of judicial supervision of a sentence of conviction, decision or order of a court that is motivated by the mildness of the penalty or by the necessity of applying a law covering a graver crime, or of a sentence of acquittal, a decision or order of the court dismissing a case, is permitted only within one year from the day they have become final. Even if a judicial mistake has been made, and the accused has been acquitted without sufficient grounds, or the penalty imposed on him is too mild, these court decisions may be changed or annulled by way of supervision only within a year from the day they have become final. The Soviet legislator proceeds from the assumption that a year after an acquittal or an excessively mild sentence, their cancellation or review are no longer expedient from the standpoint either of general or individual prevention.

Another essential guarantee of the rights of the accused (Art. 48) is that the court examining a case by way of supervision may mitigate the penalty or apply a law covering a less grave crime, but may not increase the penalty or ap-

ply a law on a graver crime, without the sentence being annulled and the case sent for a new hearing.

According to the 1957 Statute of the Supreme Court of the U.S.S.R., it has the right to review by way of supervision cases of military tribunals, and cases of other courts only in the event of violation of all-Union legislation, and in the event of the court sentence affecting the interests of another Union Republic. The main organs of court supervision are the presidiums of the Supreme Courts of the Union and Autonomous Republics, and of the territorial and regional courts, and the courts of the Autonomous Regions and National Areas.

Powers of supervision are also vested in the military tribunals of districts, fleets and army groups.

Cases are examined by way of supervision by three-man judicial collegiums of the Supreme Court of the U.S.S.R. and the Supreme Courts of the Union Republics (FLJS 8). The presidium of a court examines cases in the presence of the majority of the members of the presidium, and the plenary session of the Supreme Court of a Union Republic, in the presence of not less than two-thirds of its members.

In accordance with the Ordinance on the Supervisory Powers of the Procurator's Office of the U.S.S.R. of May 24, 1955 and the Statute of the Supreme Court of the U.S.S.R. of February 12, 1957, the Procurator-General of the U.S.S.R. and his deputies have the right of protest by way of judicial supervision against a sentence, finding or order of any court of the U.S.S.R., Union or Autonomous Republic within the limits established by the legislation of the U.S.S.R. and the Union Republics. The Chairman of the Supreme Court and his deputies have the right to protest against any sentence, finding or order of the Supreme Courts of the Union Republics. The Chief Military Procurator and the Chairman of the Military Collegium of the Supreme Court of the U.S.S.R. have the right of protest by way of supervision against sentences and findings of military tribunals of districts, army groups, fleets and armies, and other military

units and garrisons. The right of protest within the limits of their jurisdiction is enjoyed, according to the criminal procedure codes of the Union Republics, by the chairmen of the Supreme Courts of the Union and Autonomous Republics and their deputies, the chairmen of the territorial and regional courts and the courts of the Autonomous Regions and National Areas, the procurators of the Union and Autonomous Republics, territories, regions, Autonomous Regions and National Areas.

The Procurator-General of the U.S.S.R., the Chairman of the Supreme Court, their deputies, the Chief Military Procurator and the Chairman of the Military Collegium of the Supreme Court of the U.S.S.R., each in accordance with his competence, has the right to stay the execution of a protested sentence, finding or order of any court of the U.S.S.R., a Union or Autonomous Republic, until the case is decided by a court by way of supervision. Similar rights are granted by the Fundamentals of Criminal Procedure to the procurators and the chairmen of the Supreme Courts of the Union Republics in respect of a protested sentence, finding or order of any court of a Union Republic and its constituent Autonomous Republics.

The Fundamentals prescribe the participation of the procurator in a supervision proceeding, in which he supports his protest or gives his conclusion on a case examined on protest by the chairman of the court or his deputy. In case of necessity, the court has the right to summon the convicted person to the court sitting.

In the examination of cases by way of supervision, the report is given by a member of the court who also replies to questions. If the acquitted person or the convicted person or their defence counsels are present in court, they have the right to give oral explanations after the report. They are then asked to leave the courtroom. The procurator submits his conclusion, after which the judges taking part in the sitting enter a finding or a decision, which is adopted by a majority vote. In the event of the votes being equally di-

vided, the protest is rejected as not having won a majority. The procurator has the right to be present when the judges confer.

As a result of the examination of a case by way of supervision the court may dismiss the protest; annul the sentence and all subsequent court findings and orders and dismiss the case or refer it back for a fresh investigation or a new trial; annul the finding of the appeal court and all subsequent findings and orders and order a fresh cassation proceeding; cancel the findings and orders made by way of supervision and uphold the sentence and the findings in appeal, with or without changes; alter the sentence, finding or order of the court. But, as has already been said, the court sitting in a supervision proceeding has only the right to impose a milder penalty on the convicted person or to apply a law on a less grave crime.

The grounds for the cancellation or alteration of a sentence and the effects of its cancellation or alteration by way of judicial supervision are similar to those for cases on appeal for cassation.

Article 50 of the Fundamentals of Criminal Procedure deals with the *re-opening of cases because of newly discovered circumstances*.

In contrast to the examination of cases on appeal, the re-opening of cases because of newly discovered circumstances demands preliminary verification of the newly discovered circumstances undermining the legality and grounds of the sentence that has become final.

The scope of the newly discovered circumstances entailing review of a case is determined by the legislation of the Union Republics.

Grounds for the re-opening of cases in which the sentence or finding of the court has entered into force, because of newly discovered circumstances, are the following:

- 1) establishment by the sentence in force that the testimony of the witnesses or conclusions of experts were de-

liberately false, or that other evidence on which the sentence or finding were based was forged;

2) establishment by the sentence in force of criminal misconduct on the part of the judges or investigator during the trial or investigation of the case;

3) other circumstances, unknown to the court at the rendering of the sentence or the finding, which in themselves, or together with other circumstances earlier established by the court, prove the innocence of the convicted person or the commission by him of a less grave or graver crime than the one for which he was convicted; or prove the guilt of an acquitted person or a person whose case was discontinued.

The Fundamentals of Criminal Procedure establish that the review of an acquittal is permitted only within the statutory periods of limitation of prosecution by lapse of time, and not later than one year from the day the new circumstances are discovered.

The periods of limitation for the re-opening of cases with verdicts of guilty because of newly discovered circumstances are set by the criminal procedure codes of the Union Republics.

If the newly discovered circumstances indicate that the convicted person has committed a graver crime than the one of which he was accused, the periods of limitation for the re-opening of the case may be set within the period of limitations for that crime.

There is no period of limitation for the re-opening of cases with verdicts guilty because of discovery of new circumstances indicating the innocence of the convicted person or commission by him of a less grave crime.

Preliminary investigation of a declaration concerning newly discovered circumstances is conducted by direction of the procurator. Having established the existence of such circumstances, the procurator enters a protest in court together with the records of the investigation.

After the annulment of the initial sentence, the case is dismissed or is re-examined by a court of first instance.

Chapter Twelve

CIVIL PROCEDURE

1. CONCEPT AND FUNDAMENTALS

Civil suits are examined and settled by courts in accordance with the statutory rules of civil procedure. Civil procedure is judicial activity in the settlement of civil disputes or the exercise of justice in civil suits.

The jurisdiction of the courts extends to suits involving corporeal relations which are regulated by the Civil Code, and also relations regulated by the Labour Code, the Code of Laws on Marriage and the Family, and other laws on corporeal and personal rights. The courts examine and settle civil suits with the participation of the procurator, the parties to the dispute and other participants in the legal proceedings.

The law of civil procedure is a branch of socialist law regulating social relations which arise in the judicial examination and settlement of civil suits, i.e., relations in the exercise of justice in civil disputes.

Civil procedure is laid down in the civil procedure codes of the Union Republics and all-Union legislative acts. This chapter is based on the Code of Civil Procedure of the R.S.F.S.R. (CCivP) with account of the codes of the other Union Republics.

The democratic principles of Soviet justice incorporated in the Constitution of the U.S.S.R. are the basic constitu-

tional principles which determine all the activities of the courts, including the settlement of civil suits.

In settling disputes involving civil law, establishing the objective truth in disputes between the parties and remedying breaches of the law, the court acts on the following basic democratic principles: the entire judiciary is elective; people's assessors take part in the proceedings; judicial proceedings are conducted in the national language of the population; the judges are independent and are subject only to the law; all trials are public and the proceedings oral; legal proceedings are contested and the parties are given every opportunity to exercise their procedural rights in defence of their interests.

These principles are inscribed not only in the Constitution of the U.S.S.R. and the Constitutions of the Union Republics, but also in the Fundamentals of Legislation on the Judicial System of the U.S.S.R. and the Union and Autonomous Republics (FLJS) and in the Code of Civil Procedure. They determine the behaviour of the parties and the other participants in the proceedings. Their observance ensures correct, fair and lawful settlement of civil suits, utmost protection of the interests of the state and citizens, and realisation of the court's key task, namely, education of the people in a spirit of socialist labour discipline.

The court plays an active part in settling disputes between the parties (CCivP 5). It is the duty of the court to strive in every way to clarify the actual rights and relationships of the litigants. For this purpose the court is not confined to the pleadings and material submitted by the litigants, but must see to it that all the essential facts of the case are clarified objectively and to the fullest extent. With that aim in view the court must render to the citizens applying to it active aid in the protection of their rights and legitimate interests so that their lack of legal information and other similar circumstances may not be utilised to their disadvantage.

The procurator is also an active figure in the proceedings. In the interests of protecting socialist legality, the procurator has the right to join the proceedings at any stage and to act therein as a representative of the organ of state supervision of legality (CCivP 2, FLJS 14).

This combines with the freedom and equality of the parties in disposing of their rights and in presenting their evidence to the court. Courts proceed in a case only upon declaration by a party in interest (CCivP 2). But the procurator has the right both to commence a suit and to become party to any action if, in his opinion, this is required for the protection of the interests of the state or the people. A party may change the cause of claim and may increase or decrease the amount of claim, but where a party renounces his rights or his defence in court, it is for the court to decide whether such renunciation is accepted or not. This ensures the fullest all-round examination of the essentials of a civil suit, establishment of the truth in the case and a settlement in accordance with the requirements of Soviet socialist legality.

Proceedings are direct and uninterrupted. These two principles are also incorporated in the laws on judicial proceedings and are conducive to the correct operation of Soviet justice.

All the evidence in the case is examined and verified at the trial, and before the final decision is entered, the judges make a personal examination of all the available evidence.

The trial in every case is conducted without interruption with the exception of the time allotted for rest, and the judges are not permitted to hear other cases before the termination of a case already begun. This enables them to bring in a correct decision from the impressions of the evidence just examined.

Violation of procedural principles entails annulment of court decisions in cassation or supervision proceedings.

The Supreme Courts of the U.S.S.R. and the Union Republics are especially exacting in the matter of observance by the courts of procedural rules when establishing the actual relationships of the litigants and the objective truth in a case."

Let us now examine the main aspects of civil procedure in action under Soviet law and the practical application of these principles.

2. JURISDICTION

The need to file suit arises in the event of a dispute over a civil right, violation of a right, non-performance of an obligation, or other circumstances and facts producing legal effect and requiring the court's interference to clarify the relations of the parties.

The first thing to be established is jurisdiction in the case (whether it is within the competence of the court or an administrative organ). Disputes concerning civil law are decided in a judicial proceeding (CC 2). Some categories of cases fall within the competence of other state organs. Thus, not all disputes involving evictions from dwelling-houses are settled in court. Eviction from buildings belonging to industrial enterprises of the coal and steel industries, electric power stations and transport, and also to key enterprises of other industries, eviction from hostels and buildings of academic institutions and certain other buildings, is not within the competence of the courts; it is decided by administrative order, in other words, eviction from such premises, in the instances prescribed by law, is carried out by the management of the establishment or enterprise concerned. With the sanction of the procurator, it receives help from the militia in cases of forcible eviction. In such cases the court is not competent.

Nor do property disputes between state establishments and enterprises, and also co-operatives (except collective farms) and mass organisations and their enterprises and

establishments, fall within the jurisdiction of the courts (Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of July 27, 1959). As a rule, these disputes are within the jurisdiction of state and departmental arbitration boards, which are not juridical bodies.

In accordance with the Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of March 14, 1955, all disputes between state, co-operative (except collective farms), and mass organisations involving a sum of up to 100 rubles have been withdrawn from the jurisdiction of the district people's courts and referred for settlement to administrative organs superior to the debtors.

Chapter III of the Code of Civil Procedure enumerates the categories of disputes between state and mass organisations and their establishments and enterprises heard by arbitration boards and those cognisable by the courts.

Before instituting proceedings or filing suit, the plaintiff (like the court in accepting a statement of claim) must establish whether the court has cognisance of the case in question. This is also necessary because some disputes, although eventually settled in court, may be brought into court only after examination by other agencies. This does away with unnecessary litigation and helps settle most of the disputes out of court; it stimulates mass organisations to protect the working people's rights and eliminate conflicts and violations of labour laws. Thus, disputes arising from contracts of carriage by rail may be brought into court only when the railway administration refuses to satisfy, in full or in part, clients' claims for compensation of damage or loss of cargoes, or in the event no answer is received from the railway authorities to a claim within the period of time specified in the Railway Statute.

Labour disputes, i.e., disputes involving wages, discharge of a worker by reason of his being unfit for the job, etc., may be tried only after the dispute is examined by a labour disputes board at the enterprise, or by the factory or office trade-union committee. If the worker concerned does

not agree with their decision he files suit in court, which then hears the case (Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of January 31, 1957 approving the Ordinance on the Settlement of Labour Disputes).

In some cases the courts are bound to examine disputes which do not arise from corporeal relations, such as protection of political and other civil rights. Thus, the Regulations Governing Elections to the Supreme Soviet of the U.S.S.R. bind the district people's courts to decide on complaints against decisions of the Soviets of Working People's Deputies on inaccuracies in the electoral rolls.

The law binds the courts to examine certain categories of cases not involving civil law, such as establishment of facts of legal value or examination of complaints against the acts of other agencies. Such cases are decided in special proceedings, in contrast to cases of civil disputes, which are called suits upon complaint.

In special proceedings the court establishes that a given person is a dependent of the testator. Under the Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of November 10, 1944, when *de facto* marital relations existing before the promulgation of the Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of July 8, 1944 cannot be registered by the Civil Registry Office because one of the parties has died or is missing in action, the other party may apply to the people's court for a declaration of him as the spouse of the person dead or missing in action. This, like appeals from the acts of notaries public¹, is heard in special proceedings.

¹ A notarial office is a state agency which certifies and attests juridical acts, documents and incontestable facts. Notarial offices are set up in republican, regional and district centres and in the cities of Republican jurisdiction. They supervise the legality of transactions and other acts they help to perform, extend assistance to private persons in fulfilling the legal conditions validating contracts, such as form, etc. The notary sees to it that nothing illegal is contained in the transactions and documents he certifies. Otherwise he refuses to perform the notarial act and gives an appropriate motivation. Notarial acts are supervised by the courts,

Hence, to determine *jurisdiction* in a civil case is to establish, in accordance with the law, the competence of state organs—administrative or judicial—to settle litigation involving corporeal or other civil rights; in other words, it is to determine whether the court is empowered to decide the case. If a case *falls within the jurisdiction of the court* it is examined according to the rules of civil procedure; otherwise, the case is within the competence of other agencies and the rules of civil procedure are not applicable.

But to establish jurisdiction is not merely to determine that a given case or dispute may be settled by a court; another thing to be cleared up is the exact type of court where proceedings may be instituted: a district people's court, a regional court, a territorial court, or the Supreme Court of a Union Republic.

The district people's court has jurisdiction over all cases, except the most complicated and important, which are cognisable by the higher courts. Disputes between citizens involving property, regardless of the value of the claim, are examined by the district people's court. It also examines, regardless of the value of the claim, disputes between citizens and mass organisations or state establishments and enterprises, disputes between collective farms, and of the latter with other socialist organisations, arising from contracts and other property relations, and cases decided in special proceedings.

The Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of July 8, 1944 assigned cases of dissolution of marriage to special proceedings. Such cases are also within the jurisdiction of the district people's court. But it does not decide the case in substance, but only ascertains the grounds for divorce and takes steps to reconcile the spouses. If no reconciliation is effected in the district people's court, either spouse or both may bring an action in a higher court for dissolution of the marriage.

It must also be determined which of the people's or regional courts has jurisdiction of the case. It may transpire that the plaintiff (or legal person filing suit) resides in one district or region, and the defendant, in another; or that the parties are (or have concluded their contract) in one place, and their dispute (or performance of the contract which gave rise to the case) arose elsewhere. The law determines the venue. Thus, suits are filed with the court in whose district the defendant has his permanent address or permanent employment (CCivP 25).

There are some exceptions to this general rule. Actions for alimony (maintenance and support) or for recovery of damages caused by death, disablement or other bodily injury, may be filed also in the jurisdiction where the plaintiff has his residence; actions arising from contracts in which the place of performance is specified, may be filed with the court at the place of performance of the contract (as in claims arising from contract of delivery of products); actions arising from building tenancy rights, actions for exemption of property from distraint and sale, and actions brought against the estate of a deceased owner, are filed in the jurisdiction in which the entire property or its principal part is located, and not at the place of residence or stay of the defendant.

These rules governing jurisdiction are designed to give the fullest protection to the interests of the litigants, and to create the best conditions for quick and correct decisions.

3. PARTICIPANTS IN CIVIL PROCEEDINGS

The following, apart from the bench, are *participants in civil proceedings*: the parties, third parties, representatives of the parties and third parties, representatives of state agencies and trade unions, and also the procurator. Witnesses, experts, and interpreters also take part in civil proceedings. Plaintiff and defendant are the parties to a

case. *Plaintiff* is the person who brings an action to court, and the adverse party in the litigation, he whom plaintiff names as the invader of his right, is *defendant*.

At the very start of the proceedings, when a person claims that his right has been violated by another person and asks for a remedy, the court has no authentic knowledge of whether plaintiff possesses the right in question, and whether it has been violated by defendant. That is a matter for the judicial examination, and only the court in full session can provide the answer in its judgement. It is not necessary, therefore, for the right of the plaintiff and the obligation of the defendant, to be established at the commencement of the trial; it suffices for the plaintiff to bring action based on the proper evidence.

But if in the proceedings it is established that a right has been injured, but not of the plaintiff, but of another person, the court may substitute the proper plaintiff for the original plaintiff. This is done with the consent of the plaintiff. Similarly, if it transpires that the suit has been brought against a person who is not the invader of the plaintiff's right, the court may substitute the proper defendant for the original defendant, again with the consent of the plaintiff. If he objects, the court may serve a summons on the proper defendant and examine the case with the participation of two defendants in order to decide, in its judgement, which of these two defendants is the real offender against the plaintiff's rights.

Any private person (or group of persons), as well as a state or mass organisation, may be party to a case, but they must possess the right and capacity to appear in legal proceedings; in other words, they must not be deprived of legal capacity and legal ability in respect of legal proceedings. Thus, organisations and establishments which do not possess the rights of juridical persons may not appear as parties.

Finally, persons who possess rights but are incapable of defending them personally (lacking legal ability) may not

take action in court by themselves, but must be represented by their legal agents.

Third parties may become parties to a case. They are citizens or juridical persons who join a case in progress between the plaintiff and the defendant to protect their own rights or interests under the protection of the law. For instance, plaintiff has requested the court to dispossess defendant of some property and to transfer it to the plaintiff as the rightful owner. But a third party informs the court that the disputed property belongs to him by right of inheritance and submits the testament in support of his declaration. In order to arrive at the best possible resolution of the dispute and to protect the legitimate rights of the persons concerned, the court examines the case with the participation of the plaintiff and the defendant under the original suit, and the third party with an independent suit for the common subject-matter of the dispute.

This naturally complicates the proceedings somewhat, but then it reduces the dispute to a single trial. Third parties who have independent rights in the subject-matter of the dispute may become parties to the case by filing, under the general rules, a claim against either of the litigants, or against both litigants jointly (CCivP 169).

In some cases the third party does not put forward an independent claim or suit for the subject-matter of the dispute, but joins the case to prevent possible action against himself in connection with the judgement in the given case. For instance, the plaintiff is requesting the return of an automobile which, he says, had been stolen from him and was discovered in the possession of the defendant; the defendant, on his part, informs the court that he bought the automobile from a third party. The latter joins the case on his own petition or is summoned as a party defendant in order to prove to the court as joined parties that, contrary to the plaintiff's claim, the disputed automobile could not possibly be the stolen one. If the defendant's assertion or objection remains unproved and he is deprived of the auto-

mobile by a judgement of the court, he has the right of regress against the third party (the seller of the automobile) for recovery of the money paid for the automobile.

In order to allow the parties to a case and third parties to arrive at the fullest and most comprehensive settlement of their dispute and provide the best protection of their legitimate interests, the Code of Civil Procedure lays down the following rule: where the decision in the case may create for the third parties rights and obligations with respect to either of the two parties, the said third parties may join the suit, either as parties plaintiff or as parties defendant (CCivP 168). On similar grounds, the plaintiff and the defendant may seek the joinder of third parties, as parties plaintiff or as parties defendant (CCivP 167).

The parties may plead their cases in the courts either personally or through their *representatives*, i.e., persons who take part in legal proceedings in the name and in the interests of the plaintiff, defendant or third party they represent. Apart from representatives by law (parents, guardians and curators) those chosen by the parties may take part in the case. The parties have the right to arrange for defence of their rights with lawyers or persons admitted by the court to represent the parties in the case at trial.

Among those who may act as representatives in court are persons representing trade unions, on behalf of their members; executives and personnel of collectives, on behalf of their respective bodies; the chairman and members of the board of collective farms and co-operative alliances, on behalf of their bodies; the chiefs of establishments or directors of enterprises or other delegated members, on behalf of state establishments or enterprises.

Representatives must be vested with proper authority to act in court on behalf of the parties. This may be furnished either by a power of attorney, or orally in court.

The following may not represent parties:

a) persons who have not reached the age of eighteen years;

b) persons restricted in personal or public rights under a court sentence, during the entire period of such disability;

c) wards;

d) persons expelled from the bar;

e) people's judges, members of the bench, investigators and procurators (CCivP 20).

By appointing a representative to act in court on his behalf, plaintiff or defendant (or third party) is not deprived of the right of personally taking part in the proceedings. In some cases such participation may be statutory or ordered by the court.

The *procurator* is also an active participant in civil proceedings.

In exercising supervision over the observance of the law, the procurator uncovers violations of the law and acts to eliminate them. He plays a similar part in civil proceedings, working towards restoration by the court of violated civil rights and consolidation of socialist legality in civil legal relations as a result of the trial. It is his duty to see that no court judgement contradicts the law. He has the right both to commence a suit and to become party to any action at any stage of the proceedings, if, in his opinion, this is required for the protection of the interests of the state or of citizens (CCivP 2).

Having established that a law or a corporeal right or interest of a state or mass organisation or a citizen has been violated, the procurator acts to redress the wrong. He does not take part in civil proceedings at all times: he becomes party to an action only when he believes that the interests of the state or of citizens require his participation. He either brings an action against the person violating civil law, or becomes a party to a suit brought previously. In that case, he gives the court his conclusion on the substance of the dispute between the parties, thereby helping it to arrive at a correct judgement in the case, and ensuring strict observance of the law. A procurator brings a suit

only when he is satisfied that the case affects the interests of the state, society or citizens, and when persons in office or other citizens are unable to remedy the wrong without his help, or when his participation is a matter of public significance.

The orders of the Procurator-General of the U.S.S.R. say that, in pursuance of Article 2 of the Code of Civil Procedure, procurators should above all commence action to protect the interests of state and co-operative organisations, to restore rudely violated rights of citizens, and to defend the rights of citizens who for various reasons are incapable of exercising their right to defence personally (war invalids, single aged persons, incompetents, etc.).

Consequently, participation in civil proceedings is at the discretion of the procurator.

It is the duty of the court in the trial of a case affecting the interests of a state establishment or enterprise to serve due notice on the procurator (CCivP 172). The procurator then decides whether there is need for him to become a party to the case. But it is his duty to take part when the court considers his participation in a case necessary.

Soviet law gives certain other state agencies as well as trade unions the right to take part in civil proceedings to protect the working people's interests. Thus, to give greater protection to the interests of children, the law (CCivP 2a) gives Civil Registry Offices, agencies for mother and child welfare, guardianship agencies, trade unions, and the courts the right to commence suits for the maintenance and support of children (alimony). According to the Labour Code, trade unions have the right to commence action arising from labour relations, in order to safeguard the interests of their members.

State and mass organisations also have the right to bring suits to declare invalid transactions between two persons of whom one has made a clearly unprofitable transaction under the pressure of distress (CC 33, Note).

There are other instances, when state agencies and even

citizens may sue for removal of violations of the law in defence of the injured party. Under Article 66 of the Code of Laws on Marriage and the Family any person or institution may bring an action in court for cancellation of an adoption, if such is required in the interest of the adopted child.

4. CLAIM

As a rule, civil proceedings are initiated by the statement of a claim that a right of the plaintiff is being violated or has already been violated by another person. For example, a repair and service station brings an action against a collective farm, claiming the cost of repairs and other work performed, or a debt under contract of sale of fuel.

Such an application commencing civil proceedings in court is the statement of claim, and its content, the *claim*.

A claim is a process in court to which plaintiff resorts to obtain protection of his right and redress of violation of his legitimate interests.

A statement of claim whose filing commences civil proceedings in court is plaintiff's request for establishment of a civil legal relation between the parties and removal of violation of the law by defendant.

Sometimes plaintiff's request is only for recognition of the existence or absence of a certain legal relation between him and the defendant; he does not claim recovery or confiscation of any property from the defendant; what he wants is the court to state that a right exists as his. For example, the plaintiff requests the court to recognise him as the author of a certain work, or to recognise a contract concluded with the defendant as invalid. Suits are also brought by heirs who have the right in a statutory share, requesting that the part of the testament violating their right be declared invalid. Such *suits for recognition* are relatively rare.

In most cases the plaintiff does not request only recognition of his right, but also award of some property belonging to him under contract, recovery of a sum due in consequence of an injury inflicted upon him by the defendant, or on some other legal ground. These are *suits for award or execution*, for if the court adjudges the plaintiff right, and the dispute is decided in his favour, the defendant must, in pursuance of the judgement, pay the plaintiff the appropriate sum of money or deliver the disputed property.

For a claim to be recognised as a means of judicial redress of a violated civil right, and for the civil proceedings to commence, the plaintiff must have the *procedural right of action*. As has been said, not every violation of civil law is a subject-matter for civil proceedings, and not every dispute concerning civil law is settled in court of law. The participants in a case (above all the plaintiff) must possess legal capacity in respect of proceedings, otherwise they are barred from appearing in court. Finally, the plaintiff must be a party in interest upon whose statement the court proceeds in a case (CCivP 2). Only then does plaintiff possess the procedural right of action or the right to sue. Otherwise, suit may not be filed in court, and if filed, must be dismissed.

Very often a plaintiff possessing the procedural right to sue may lack the *substantive right of action*, which means that he has no right in the subject-matter in dispute or that his plea concerning violation of civil law by defendant is not true. In such cases the court rejects the claim. Thus, the substantive right of action is the right to satisfaction of the claim, which is established in the court proceedings.

Statements of claim filed with a people's court may be either written or oral. In the latter case the statement is recorded (by the judge or the secretary of the court) and signed by the judge and the plaintiff. Only written statements of claim may be filed with regional (city) and other courts.

Like any other application filed with a state agency, statement of claim must be made in simple and plain language, it must name the person violating the law, clearly state the nature of the violation, and the plaintiff's request.

The statement of claim must contain: a) exact name of the plaintiff, as well as of his attorney if the complaint is filed by the latter; b) exact name of the defendant; c) exact permanent residence, or place of permanent occupation, of the plaintiff and of the defendant; d) statement of the facts which serve as a basis for the claim, and indication of proof substantiating the claim; e) the plaintiff's prayer for relief and a statement of the amount of the claim, i.e., the value of the thing claimed by the plaintiff (CCivP 76).

In complicated cases heard in court (especially territorial, regional and the Supreme Court) statement of claim and all documents are filed with copies for the defendant (CCivP 78), to allow him to prepare for the proceedings in court.

In the event of non-compliance with Articles 76 and 78 (CCivP) or non-payment of the state fee by the plaintiff when filing the complaint (unless he is absolved from such payment), the court does not proceed with the case. It informs the plaintiff thereof, granting him a period of time to rectify the defect of his complaint, after which the court proceeds in the case.

A *state fee* is collected for the filing of every complaint and appeal to a higher court against the judgement of a lower court. The fee depends on the amount of the claim and the nature of the complaint; where the amount of the claim is under 20 rubles, the fee is 30 kopeks, and where the amount is 500 rubles or over, the fee is 6 per cent of the amount of the claim. For filing an appeal from a court judgement a fee is collected equal to 50 per cent of the rate of the state fee established for complaints, and is computed from the amount in dispute. For complaints filed in disputes between collective farms and in their disputes with

state or co-operative organisations, the state fee is one per cent of the amount of the claim, but not less than one ruble.

In spite of the small court fees, the law exempts some categories of plaintiffs from the payment of such fees. These include factory and office workers suing for wages or other claims arising from labour contract; members of collective farms in their disputes with collective farms over remuneration for work-day units earned; authors and inventors claiming remuneration for their works or inventions; plaintiffs suing for alimony, etc.

The state fee and other costs (such as travelling expenses of witnesses, compensation of experts and witnesses) incurred by the plaintiff are collected from the defendant in full if the claim is fully allowed by the court, or in proportion to the amount of the claim allowed by the court's decision.

Defendant may make a *counter-claim* against plaintiff by filing a complaint in the same case, setting forth his own request. The counter-claim must contain all the elements of the complaint described above and must be filed with the court not later than the day on which the principal complaint is heard. The court examines both complaints and may resolve all the disputes between the plaintiff and the defendant in one case.

Plaintiff may move that the *collection of the claim be secured* by attaching property belonging to defendant, which is either in his own possession or in that of third parties. This measure, applied by the court with respect to all categories of defendants, excepting state establishments and enterprises, is designed to give the maximum protection to the interests of plaintiffs whose claims appear to be justified. That is why claims are not secured in all cases, but only when the claim appears sufficiently well supported by the documents submitted, and when failure to secure the claim may subsequently make impossible execution of a decision in favour of the plaintiff.

5. ADJUDICATION OF CIVIL CASES

To arrive at a correct judgement in a civil or other case over which a court has jurisdiction, it must make an examination of all the relevant circumstances. The court verifies all the evidence, interrogates witnesses and experts, checks the grounds of the pleas entered by the parties, etc. Only after a detailed oral and public examination of the case and an assessment of all the evidence does the court pass judgement. These activities are the most important stage in civil procedure.

In contrast to criminal procedure, civil procedure has no preliminary investigation: civil suits are examined in court only. The parties collect material and submit evidence in such a manner as to have everything ready for the opening of the trial when the court makes a thorough examination of the disputed relations of the litigants. The Code of Civil Procedure binds the court to exercise maximum activity in the examination of civil cases from the moment they are commenced.

The judge must take certain preliminary measures to expedite the hearing of the case (CCivP 80). He decides on the witnesses to be summoned for the trial session; obtains all documents of evidence and, when required, orders an inspection of the premises, or examination of the object in dispute by experts, etc. In particularly complicated cases the judge summons the defendant, serves on him copies of the complaint and evidence adduced by the plaintiff, to allow him to acquaint himself with the suit and submit his own evidence against the claim.

In commencing a trial the court ascertains which of the parties, witnesses and other persons, whose presence is necessary for a correct judgement in the case, are present, and whether summons has been served on those who are not present. In the event of non-appearance in court of one of the parties upon whom summons has been served, the court may hear the case in his absence. But in certain suits,

as for the maintenance of children (alimony), the court may order the defendant brought in by the militia.

If the plaintiff and the defendant both fail to appear without justifiable reason and have not filed a motion that the case be heard in their absence, the trial of the case is adjourned. If the parties fail to appear in response to a second summons, the court enters an order dismissing the case. The plaintiff then has the right to file the suit anew under the general rules (CCivP 98-100).

The court ascertains whether the parties intend to challenge the court. The judge and people's assessors must withdraw from the case if they are in any way interested in its outcome.

If the motion for removal or withdrawal is sustained, the given member of the bench is replaced by another (for instance, the next people's assessor on the list). The matter is decided by the two other members of the court who are not challenged, and by the bench as a whole if it is challenged *in toto*.

The court then ascertains whether the parties intend to enter motions to summon witnesses, obtain documents or any other evidence on points of procedure, etc.

A party may move that the trial be suspended. The court examines his motion and must sustain it if it is based on the law, as in the event of the death of a litigant; when a juridical person, a party to the suit, ceases to exist; when the case in question cannot be determined prior to adjudication of another case which is being tried in a civil, criminal or administrative proceeding (CCivP 113).

The court then proceeds to examine the case in substance: it examines the pleading and claims of the plaintiff and the objections of the defendant by verifying and making a final assessment in the chamber of the evidence submitted by the parties and collected by the court.

The parties may reach a compromise. The court must not restrain the parties in this, unless their actions are il-

legal, or their accord and satisfaction are detrimental to the interests of the state, mass organisations or citizens. The plaintiff has the right to withdraw his claim, change the grounds of his claim, and increase or decrease the amount of the claim.

The active role of the court in establishing the actual legal relations of the litigants does not exclude, but rather postulates activity and initiative on the part of the parties to a civil proceeding. Each party must prove the facts upon which he relies as the basis of his claims and objections (CCivP 118).

If a party is unable or unwilling to adduce the necessary evidence the court may order him to adduce such evidence or to assist in the collection of the required material or evidence.

The proofs used by the court to determine the actual relations of the parties are known as *judicial evidence*, which includes testimony of witnesses, written evidence, expert testimony, etc.

The testimony and explanations of the litigants are also classified as judicial evidence, although they are interested in the outcome of the case. But because it comes from persons who are patently interested in the outcome of the case, the court takes an especially critical view of it, and must verify its correctness even when the evidence adduced is injurious to the interests of the declarant.

Soviet civil procedure rejects the view that admission is the best proof, and so the court makes a particularly careful examination of this type of evidence too, to prevent the parties from achieving illegal results, deceiving the court and violating the legitimate interests of the party whose admission is due to material or other dependence on the other party.

An admission made out of court, and sometimes presented in the form of a so-called extrajudicial composition, is another type of evidence that must be verified by the court.

If the court accepts the extrajudicial settlement or approves a composition in court, the case is dismissed and the party agreeing to the composition and waiving his rights may not file the suit anew.

Testimony of witnesses is information submitted to the court by persons who have seen, heard or in any other way learned of circumstances or facts relevant to the case. It is a most common type of judicial evidence and is admitted in all instances except where the reduction to writing of certain acts or relations is required by law. Thus, testimony of a witness in court will not constitute proof that plaintiff and defendant are parties to a contract of loan for a sum exceeding five rubles, because the law (CC 211) stipulates that such contracts must be made in writing.

Witnesses who have their permanent residence outside the place in which the case is tried, and are unable to be present in court, may, by authorisation of the trial court, be examined by the court at their place of residence. In that case a record of the interrogation of the witness is submitted to the adjudicating court. In all other cases witnesses are interrogated in court during the proceedings, being duly forewarned of their liability for false testimony. The court may order confrontation of witnesses in order to clarify conflicting points in their testimonies.

All written instruments, documents, and correspondence of a business or private nature are regarded by the law as written evidence. In civil cases it is more common than the testimony of witnesses. Written evidence is usually appended to the claim or submitted in the course of hearings. In the event the parties are unable to secure from an establishment or enterprise written evidence required for the determination of a case, the court may issue a certificate to the parties, authorising them to obtain documents, copies, and various information from government establishments and private persons for submission to the court. The court may also procure these documents directly from the institutions and persons concerned.

The court may appoint experts to clarify questions arising in the trial of a case which require special knowledge. Experts are appointed by the court from among specialists in a given field and, like witnesses, they must not be interested in the outcome of the case. In order to give the court a competent opinion they have the right to acquaint themselves with the circumstances of the case, question witnesses, and take part in the verification of other evidence in the case.

Experts submit their opinion either orally or in writing, as the court may direct, and recite all grounds for their conclusions. The parties may contest these conclusions, which may also be over-ruled by the court in a reasoned decision. The court has the right to appoint a new panel of experts.

To establish the truth the parties may also submit to the court, and the court may itself request, additional evidence.

The total evidence in a case is assessed by the whole bench in accordance with their convictions. This leads the court to conclude on the presence or absence of violation of law in the relations of the parties, and on the strength of this to determine the measures to be taken to remove the violation or to resolve the dispute.

If the court judges that the defendant has violated the plaintiff's right, it may, depending on the nature of the dispute, order recovery from the defendant in favour of the plaintiff of the amount of the loss inflicted (in suits for non-performance of contractual obligations or compensation of injury), take away his property and transfer it to the plaintiff (in suits for protection of the right of ownership), etc. Otherwise the court gives judgement against plaintiff. When the claim is not based on an agreement of the parties and is not determined by law, the court, in adjudicating the case, may, depending on the circumstances, exceed the limits of the claims presented by the plaintiff; for instance, it may order the collection

of statutory interest or income from property awarded, etc.-(CCivP 179).

When the plaintiff requests the court for judgement on the existence or absence of definite legal relations between him and the defendant (in suits for recognition), the court renders an appropriate judgement recognising, say, the plaintiff's copyright, or refusing recognition of such right; or recognising a contract as valid or invalid.

Judgement is the court's conclusion based on the law in a dispute of the parties. It is the goal of civil proceedings: the rules and principles of civil procedure are designed to ensure judgements conformable to law and justice.

For a judgement to conform to law and justice the court must be convinced that plaintiff has established his claim, and must then, by reference to the relevant evidence, reason its decision to satisfy the claim; or, in the event of the claim being unfounded, must reject it, making reference to evidence refuting the plaintiff's contention and supporting the defendant's objections.

The judgement of the court is an important act of state power resolving a dispute of the parties. It is made in the name of the Union Republic and made public in court immediately upon completion of the trial. The law requires the judgement of the court to be rendered in the chamber after completion of the hearings, which are, as a rule, conducted in open session. If the case is heard *in camera*, the judgement of the court, in any event, must be announced in public (CCivP 96).

A judgement is made by a majority vote. Each judge (people's assessor) may attach to the record his dissenting opinion.

The judgement must state the substance or subject-matter of the dispute; the grounds for the decision and references to the laws by which the court was guided; the contents of the judgement rendered; the manner in which it is to be enforced, and the manner in which appeal may be taken from the judgement (CCivP 176).

If it is difficult to render judgement immediately upon completion of the trial, because of special complications in the case, the law (CCivP 177) says that, as an exception, the preparation of a judgement with a considered opinion may be postponed for a period of not more than three days, but in that event the court must announce to the parties the mandatory part of the decision contained in the judgement at the same hearing in which the trial is completed (under the laws of the Georgian S.S.R., Byelorussian S.S.R. and the Ukrainian S.S.R. the court is not under an obligation to announce the mandatory part of its decision on the day of the trial).

Judgements rendered by the court are subject to immediate execution only in cases specified by law (for example, on claims for wages or alimony). In all other cases the decisions are executed after they acquire *legal force*. The parties and the procurator have time to appeal (to protest) to a higher court against a decision they consider illegal or unfounded. The statutory period is 10 days from the day judgement is rendered. Otherwise it becomes final and may be executed.

If an appeal is taken by the parties or a protest is lodged by the procurator, the decision does not acquire legal force until it is sustained by a higher court.

Apart from judgements, the court enters *findings*, which differ from judgements in that they determine separate judicial matters (such as securing a claim, suspending or resuming proceedings, postponing execution of judgement, etc.).

Appeals (protests) against the findings of the court may be filed apart from an appeal from or protest against the judgement only in cases expressly permitted by the law (as with a finding of the court securing a claim), and when the finding entered by the court bars further proceedings in the case. Appeals or protests may be filed within five days from the entry of the finding.

A court which has rendered a judgement is not empowered to revise it with a view to remedying its violation of the law.

6. APPEALS AND PROTESTS AGAINST JUDGEMENTS

Observance of the rules of procedure ensures rendition of essentially correct judgements. But mistakes do occur, especially when the court allows violations of procedural rules. To remedy these and ensure legal and well-founded judgements the law (the codes of civil procedure of the Union Republics) gives the parties an opportunity of filing an appeal from a court judgement with a higher court. The law (the codes of civil procedure of the Union Republics and the Ordinance on the Supervisory Powers of the Procurator's Office of the U.S.S.R.) gives the Procurator's Office the right to lodge protests against court judgements.

The statutory procedure governing the verification by a higher court of court judgements which have not become final is known as *cassation appeal or protest against court judgements*. Soviet procedure does not recognise what is known as appeal—the right of a higher court to retry a case adjudicated by a court of first instance.

Every court judgement may be appealed from by the parties (or protested against by the procurator) within the period fixed by the codes of civil procedure (10 days in most Union Republics) with a higher court, which is bound to verify the judgement by way of cassation or revision and scrutinise the decision for its legality. The higher court, in verifying the legality and the grounds of the judgement rendered by the lower court, is not in any way bound by the limits of the appeal (or protest) and verifies the whole case, in a revisional procedure, in order to remove any breach of the law by the court.

The procurator has the right to protest any judgement in violation of the law.

In order to discover violations of the law in court judgements and findings, the procurator, both on his own initiative and on complaints from citizens and reports from persons in office, the press and mass organisations, verifies cases in court and may demand these cases from the court for verification by way of supervision.

Having discovered a breach of the law in a court judgement which must be annulled or modified, the procurator draws up a protest setting forth the substance of the violations and demanding annulment or modification of the judgement.

The appeal (or protest) from a judgement or finding of the court is filed with the trial court, which then transmits the appeal (or protest) and the case for examination by a higher court.

In a cassation procedure the higher court examines the whole case and the grounds for the appeal or protest. The parties may take part in the cassation proceedings of which they are duly notified in the manner established by law, i.e., in a regional (territorial) court and in the Supreme Court of an Autonomous Republic, by notification in each case, and in the Supreme Court of a Union Republic, by the posting within the court building of the calendar of cases marked for hearing.

A procurator filing a protest has the right to take part in the proceedings in the higher court and to submit his conclusions, which are, as a rule, entered by a deputy of the superior (say, regional) procurator, or the procurator of the department for supervision of civil cases in court.

The procurator takes part in cassation proceedings in all cases in which a representative of the Procurator's Office took part in the court of first instance or where he protested the judgement.

If a higher court arrives at the conclusion that the appellant, or the procurator protesting against the decision, is wrong, and that the judgement conforms to law and justice, it upholds the decision in full effect.

If the higher court finds the judgement unlawful or groundless it may: a) reverse the judgement in full or in part and remand the case for a new trial by the same or a different bench of the lower court; b) dismiss the proceedings where it finds that the plaintiff has no right to sue, or that the case is not subject to court jurisdiction; c) modify the judgement of the lower court, without remanding the case for a new trial, provided the modifications do not require any collecting or additional examination of evidence (CCivP 246).

In order to do away with red tape the law establishes that no judgement which is essentially correct may be reversed for purely formal reasons. Only in certain labour cases, the higher court has the right (when the facts of the case are sufficiently clear) to make a new decision.

Judicial proceedings usually culminate in judgements correctly settling disputes and satisfying the litigants. But incorrect judgements may come into force without appeal or protest being filed in due time, and without correction by way of revision.

It is important for court judgements in force to be stable: this enhances legality and stability in legal relations between citizens, and state and mass organisations. But under Soviet law, no decision illegal in substance, even if it has become final, may remain in force, but must be annulled or modified.

For such cases, the law (codes of civil procedure, the Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of August 14, 1954 "On the Formation of Presidi-ums within the Supreme Courts of the Union and Autonomous Republics, and Territorial and Regional Courts and the Courts of Autonomous Regions") establishes an extraordinary procedure for the review of judgements that have come into force—the *review of judgements by way of supervision*.

This procedure is relatively rare, and is, in brief, as fol-

lows. Having established from declarations or complaints of citizens, press reports and other sources that a judgement of the district people's court which has entered into force or a cassation finding is unlawful or groundless, the procurator of an Autonomous Republic, territory or region or the chairman of the appropriate court files a protest with the Presidium of the Supreme Court of the Autonomous Republic, or the territorial or regional court which has the case under review.

The presidium of the court, having examined the protest, either agrees with it, and annuls the illegal or unfounded decision or finding of the court, modifies it, or enters a new decision; or disagrees with the protest and rejects it.

A protest against the decision of the presidiums of the said courts may be filed by the procurator of the Union Republic (or his deputies) or by the Chairman of the Supreme Court of the Union Republic (or his deputies) with the Judicial Collegium for Civil Cases of the Supreme Court of the Union Republic. A protest against the finding of the Collegium by way of supervision may be filed with the Presidium of the Supreme Court of a Republic by the Procurator-General of the U.S.S.R., the Chairman of the Supreme Court of the U.S.S.R., the procurator of the Union Republic and the Chairman of the Supreme Court of the Union Republic and their deputies. A protest against the decision of the Presidium of the Supreme Court of a Union Republic may be filed with the Plenary Session of the Supreme Court of the U.S.S.R. by the Procurator-General of the U.S.S.R. or the Chairman of the Supreme Court of the U.S.S.R.

The Chairman of the Supreme Court of the U.S.S.R. and the Procurator-General of the U.S.S.R. also have the right to file protests with the Plenary Session of the Supreme Court of the U.S.S.R. against the judgements of the Judicial Collegium for Civil Cases of the Supreme Court of the U.S.S.R.

District or city procurators have no right to file protests against decisions and findings which have entered into force. But when they discover that such a decision of the court is illegal, they are duty bound to transmit the case with their motion of protest to their superior procurator. The latter either agrees with the protest and accordingly sends the case for examination by way of supervision, or rejects it, giving his reasons to the lower-ranking procurator.

Re-opening of cases by reason of newly discovered circumstances is another extraordinary procedure of review of judgements that have come into force. This procedure is adopted when new circumstances are discovered which have an essential bearing on the case and which were not known to the petitioner during the hearing; when a judgement in another case establishes that there occurred in the case false testimony of witnesses, criminal acts of parties, their representatives or experts, or criminal acts of members of the court who participated in the civil case; when the judgement in the case is based on documents subsequently declared a forgery by a court judgement; or when a decision of a court or of another authority upon which the judgement in the case is based has been set aside (CCivP 251).

A petition for re-opening a case by reason of newly discovered circumstances may be filed either by any party to the suit, or by the procurator or the chairman of the court.

7. EXECUTION OF JUDGEMENTS

The execution of court judgements is the final stage of civil proceedings. Its significance lies in that the execution of a court judgement removes the breach of the law determined in the judgement.

Judgements which have entered into force and which are not executed voluntarily, are subject to compulsory execution by officers of the court.

Officers of the court act in accordance with rules governing the execution of court judgements and findings. Appeals from acts of officers of the court may be filed with the court which examines the complaint and, when required, summons the parties concerned.

Officers of the court initiate execution of judgements on the basis of writs of execution issued to the interested party by the court. Judgements in all disputes between state enterprises and institutions, collective farms and other voluntary organisations must be presented for execution within one year, and those in all other disputes within a three-year period (CCivP 255¹).

While executing a judgement in full conformity with the rules of the Code of Civil Procedure, the officer of the court must also abide by the law which protects the rights and interests of the debtor. Thus, execution is not levied upon some types of property of the debtor; when execution is levied upon the debtor's wages, he retains, in any event, 50 per cent of his earnings (CCivP 289).

If a debtor's assets are insufficient for the full satisfaction of all the claims against him under several writs of execution, priority is given to some categories of recoverers; thus, alimony is collected first, and is followed by debts to state agencies, etc. (CCivP 266).

The officer of the court takes steps to discover the whereabouts of the debtor's property and cover the debts by distraint. Some categories of property are exempt from levy of execution.

The officer of the court accepts for compulsory execution writs for which the period of limitation has not expired. He may not execute instruments for which the period of limitation has run out.

It is also the duty of the Procurator's Office to supervise the execution of court judgements. This is done on the initiative of the procurator and by way of verification of complaints and reports.

8. ARBITRATION OF PROPERTY DISPUTES

As has been said above, property disputes between state enterprises and establishments, as well as co-operatives (with the exception of collective farms) and mass organisations, are exempt from the jurisdiction of the courts. In special arbitration proceedings the parties themselves, or rather their responsible agents, settle their dispute under the chairmanship of an arbitrator; if they do not reach a settlement the dispute is decided by the arbitrator.

State agencies whose duty it is to settle such disputes in arbitration proceedings are known as *state or departmental arbitration boards*. State arbitration boards operate under the Statute on State Arbitration Boards of May 3, 1931 (see Chapter Three), and settle disputes between socialist enterprises and organisations subordinate to the various departments or Economic Councils.

State arbitration boards settle property disputes with an eye to strengthening contractual and planning discipline and promoting cost-accounting.

Another important function of state arbitration boards is settling disputes which arise when departments or Economic Councils co-ordinate the principal terms of contracts of delivery of products, and when socialist organisations conclude business contracts (so-called pre-contractual disputes).

A most important task of the state arbitration boards is combating the narrow local approach of economic agencies to the performance of contracts of delivery, and securing improvement of the quality of goods delivered. This is done by arbitrators examining disputes which arise in the conclusion of contracts and especially in cases of non-performance of contract, and delivery of low quality or substandard goods, or incomplete sets.

The jurisdiction of the boards and the rules governing their operation are defined in the said Statute and instruc-

tions of the State Arbitration Board under the Council of Ministers of the U.S.S.R.

Arbitration boards examine disputes on complaints from enterprises, establishments and organisations concerned, and by authorisation of superior state agencies, including higher arbitration boards. Besides, having established a breach of contractual discipline, a state arbitration board may commence a case on its own initiative.

The arbitration boards examine disputes only if plaintiff has already laid his claim before the organisation violating contractual discipline or his rights but has failed to receive satisfaction.

The parties are usually represented by the heads of establishments, enterprises and organisations or their deputies. As an exception the case may be heard in their absence.

Disputes are settled in accordance with the laws and decisions of the Government of the U.S.S.R. Having discovered activities on the part of the disputants violating the law and decisions of the Government of the U.S.S.R., or other shortcomings, the state arbitration board, depending on the nature of the violations and shortcomings discovered, reports this to the disputants' superior agencies, control organs, and also the Procurator's Office.

Awards of state arbitration boards are not subject to appeal for cassation. They are verified by way of supervision by the chief arbitrator of the state arbitration board settling the dispute and also by the agency within whose framework the board operates.

Awards of state arbitration boards are subject to immediate execution, unless stayed by the chief arbitrator or the agency within whose framework the board operates. Execution is voluntary. In the event of refusal to execute such awards, persons in office guilty of this are made answerable, while the award is executed compulsorily under an order issued by the arbitrator. Such orders

are executed in the same manner as court judgements (through the bank, financial agency, or officer of the court).

Disputes between enterprises and organisations within Ministries, Departments or Economic Councils of economic administration areas are settled by the appropriate *departmental arbitration boards*. Their arbitrators are appointed by Ministers, heads of Departments and Economic Councils, and work essentially on the same principles as the state arbitrators.

TO THE READER

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